

1 UNITED STATES DISTRICT COURT  
 2 WESTERN DISTRICT OF WASHINGTON  
 3 AT TACOMA

4 UNITED STATES OF AMERICA,	)	Docket No. CR05-5828FDB
5 Plaintiff,	)	Tacoma, Washington
6 vs.	)	February 19, 2008
7 BRIANA WATERS,	)	VOLUME 6
8 Defendant.	)	

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 11 TRANSCRIPT OF PROCEEDINGS  
 12 BEFORE THE HONORABLE FRANKLIN D. BURGESS  
 SENIOR UNITED STATES DISTRICT COURT JUDGE, and a jury.

13 APPEARANCES:

14 For the Plaintiff: MARK N. BARTLETT  
 ANDREW C. FRIEDMAN  
 Assistant United States Attorney  
 700 Stewart Street, Suite 5220  
 Seattle, Washington 98101-1271

16 For the Defendant: ROBERT BLOOM  
 Attorney at Law  
 3355 Richmond Boulevard  
 Oakland, California 94611

19 NEIL M. FOX  
 Cohen & Iaria  
 1008 Western Ave., Suite 302  
 Seattle, Washington 98104

22 Court Reporter: Teri Hendrix  
 Union Station Courthouse, Rm 3130  
 1717 Pacific Avenue  
 Tacoma, Washington 98402  
 (253) 882-3831

25 Proceedings recorded by mechanical stenography, transcript  
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1 TUESDAY, FEBRUARY 19, 2008 - 8:40 A.M.

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3 (Jury not present.)

4 THE CLERK: This is in the matter of the United  
5 States versus Briana Waters, Cause CR05-5828FDB.

6 Counsel, please make an appearance for the record.

7 MR. FRIEDMAN: Good morning, Your Honor. Andrew  
8 Friedman and Mark Bartlett for the United States.

9 MR. FOX: Good morning, Your Honor. Neil Fox and  
10 Robert Bloom for Ms. Waters, who's present.

11 THE COURT: All right. One matter. I am not sure it  
12 needs to be done this morning, I mean before we get the jury  
13 in, but the one that's closest to anything that needs to be  
14 done would appear to be the Government's motion to exclude  
15 what's been classified as self-serving hearsay and a  
16 conviction, I guess, of Mr. Corrina, back in 1993 or so  
17 talking about a malicious mischief conviction.

18 Let me start with it this way. Mr. Fox, this conviction,  
19 is that an issue?

20 MR. FOX: Your Honor, I don't believe it would --  
21 no.

22 THE COURT: Okay. Then the self-serving hearsay  
23 thing, I don't know if I have a complete picture of what was  
24 said.

25 Are you saying here that Ms. Waters called Corrina and

1 said this, that was it, or there's some other conversation  
2 around that in terms of what the Court should be concerned  
3 with?

4 MR. FRIEDMAN: No. I think that's the conversation.  
5 She called and says, I am innocent and tell the truth.

6 THE COURT: That, and hang up? No response, no  
7 nothing?

8 MR. FRIEDMAN: That's the entire material part of the  
9 conversation, yes.

10 THE COURT: Explain that to me. I don't understand  
11 that kind of conversation. I dial the phone, and the person I  
12 am calling answers and I say this and hang up?

13 MR. FOX: Maybe Mr. Friedman can add more.

14 MR. FRIEDMAN: Your Honor, I think she's calling  
15 because she understands that Mr. Corrina is going to be called  
16 and --

17 THE COURT: What I am asking for is, is that as much  
18 as you know about the conversation right there, and that's it?

19 MR. FRIEDMAN: No, Your Honor. She called because  
20 the Government has contacted her, and she knows that people  
21 are going to be called and interviewed about her, that the  
22 Government is going to contact Mr. Corrina, so she's giving  
23 him a wake up call or a warning call, and during that call she  
24 says you are going to hear from the Government --

25 THE COURT: Well, now you said during that call.

1 That's what I am asking about. What's going on here?

2 MR. FRIEDMAN: She makes a call to Mr. Corrina to  
3 say: You are going to hear from the Government, they are  
4 going to be contacting people I know, and they will contact  
5 you, I am innocent, and my lawyer has said that if you don't  
6 tell the truth, you can get in trouble. So it's basically a  
7 warning to him and a statement to him knowing that he is going  
8 to be interviewed shortly by the Government.

9 THE COURT: That's what you are saying?

10 MR. FRIEDMAN: Your Honor, because it's basically a  
11 way for her to introduce the fact that she is saying she's  
12 innocent without being cross-examined about that. So she is  
13 getting to say -- it's hearsay from her.

14 THE COURT: She said that in her plea, too.

15 MR. FRIEDMAN: Well, she said she hadn't said that to  
16 the Court. If she wants to actually say that to the jury, she  
17 can say that by testifying. But it's basically straight up  
18 hearsay under Rule 801, Your Honor.

19 THE COURT: It depends on why it's given, I suppose.  
20 Let me get a response so I can hear the whole story and then I  
21 can decide something, I guess.

22 MR. FOX: Your Honor, there's two issues. The first  
23 is Mr. Corrina has to explain why he perjured himself in front  
24 of the Grand Jury. Mr. Corrina testified in front of the  
25 Grand Jury -- well, first he testified -- he was contacted by

1 Agent Halla and said, "I don't know Briana Waters," his own  
2 cousin. Then he was called in front of the Grand Jury and  
3 testified, "Car? We never rented a car," under penalty of  
4 perjury.

5 Then after he was threatened with a perjury prosecution,  
6 he said a number of other things. We don't want the jury to  
7 believe that he perjured himself in front of the Grand Jury  
8 because Ms. Waters told him to do so. Ms. Waters told him,  
9 tell the truth and you can get in big trouble if you don't  
10 tell the truth.

11 So we are not necessarily offering it for the truth of the  
12 matter asserted, but to explain that his decision to perjure  
13 himself had nothing to do with Briana Waters.

14 So, I think otherwise, the jury is going to think, without  
15 any foundation, that he was trying to protect Briana, that he  
16 was doing something to help her when she told him to tell the  
17 truth.

18 That's the key part. So it's not really being offered for  
19 the truth of the matter asserted. It's being offered to show  
20 that Briana Waters told him to tell the truth and he decided  
21 not to tell the truth for his own reasons.

22 THE COURT: All right.

23 MR. FRIEDMAN: Your Honor, he'll testify that he  
24 initially didn't tell the truth to protect her, but it was his  
25 decision, there's no connection, there's no suggestion that

1 it's her. So it doesn't need to be offered for that reason.

2 She can't get her statements to other people -- her  
3 hearsay that "I am innocent" in. It's incredibly damaging  
4 evidence if it comes in. It's complete hearsay. She can  
5 testify if she wants to say she's innocent. She can testify  
6 if she wants to say, I told people to tell the truth, but it's  
7 not relevant for any other purpose.

8 Mr. Corrina isn't going to attribute anything -- any ill  
9 motive to her, any suggestion that she asked him to lie.  
10 There's not going to be any suggestion like that. It's not  
11 relevant for the purpose the defense says. It's just pure  
12 hearsay.

13 THE COURT: That's both parties' position. I guess I  
14 am trying to determine -- this conversation sounds like it was  
15 very short, so I don't know if that leads into anything else  
16 which Mr. Corrina might have said, if I decide to allow that  
17 evidence.

18 I am trying to, I guess, get the full picture of this. I  
19 can't get it in my mind, the conversation. Like I said, if  
20 you pick up the phone and you say this and hang up, and maybe  
21 even no response from the other side or anything else.

22 MR. FRIEDMAN: Your Honor, it is not tied to any  
23 other evidence in this case. It doesn't lead to anything.  
24 It's not related to anything. Mr. Corrina said what he said  
25 for his own reasons, and he'll explain those. He's not going



1 to link those to Ms. Waters. There's no connection to this  
2 conversation and any of the other evidence that will come out  
3 through Mr. Corrina.

4 THE COURT: Well, let me say this. I understand what  
5 you both are saying. Maybe I am at a point where I need to  
6 hear what Mr. Corrina is saying about what he knows about this  
7 case. To the exclusion of what we are talking about now, when  
8 I hear all that evidence, maybe I can come to a better  
9 position as to what it's offered for.

10 Mr. Corrina -- it sounds like he went before the Grand  
11 Jury and lied, so I don't know how that is going to develop.

12 MR. FRIEDMAN: He'll testify that he did not recall  
13 the car rental when he was in front of the Grand Jury so he  
14 said something factually wrong, but it wasn't a lie.

15 THE COURT: You want me to parse it out, and I don't  
16 want to do that at this point. I want to hear more before I  
17 do that. Right now, I don't see any sense that that is coming  
18 up at the moment, and it should have come up in direct. It  
19 would only come up in terms of in cross-examination.

20 MR. BARTLETT: And Mr. Corrina will not testify  
21 before the morning break. I am virtually certain of that.

22 THE COURT: All right. Have I heard it all now how  
23 this thing will come up? Of course, you are offering it for  
24 something other than the hearsay.

25 Now, give me exactly why you are offering it, other than

1 to say -- to explain why he would lie before the Grand Jury.

2 MR. FOX: The other thing would be, the Government, I  
3 believe, through Mr. Corrina is going to offer other  
4 conversations that Mr. Corrina now says he had with Briana  
5 Waters about this Center for Urban Horticulture fire. He's  
6 going to say they had some conversation at some other point,  
7 that he talked about some Crime Stopper thing he saw on the  
8 news. So I guess it's kind of like the rule of completeness.  
9 If the Government is going to bring up some of Ms. Waters'  
10 statements through Mr. Corrina, we think all of them ought to  
11 come in.

12 THE COURT: Well, I think there's a difference  
13 between against interest and self-serving. That's a little  
14 bit different, so I have got to weigh this thing.

15 MR. FOX: Your Honor, there's one more matter. There  
16 are a number of matters that need to be addressed. We don't  
17 have to address them now, except for one, and that relates to  
18 Tiffany Tudder, who I believe the Government is going to lead  
19 with.

20 MR. BARTLETT: Second.

21 MR. FOX: Second witness. We had filed a motion  
22 earlier to have an offer of proof as to what she would say. I  
23 believe we deferred ruling on that, and we would ask that  
24 there be a voir dire outside the presence of the jury so that  
25 we can find out exactly what she's going to say and see

1 whether it's admissible or not, because we believe she really  
2 doesn't remember a whole lot about the conversations that took  
3 place in 1998 at the -- this is the witness with the New York  
4 Times reporter.

5 THE COURT: This is the person that said she was at a  
6 meeting, and this is what she heard the Defendant speak?

7 MR. FOX: Right, but she doesn't have a very good  
8 memory of what the question was, the question and answer, and  
9 the Government, we believe, is going to try to lead her by  
10 showing her the New York Times article, and basically lead her  
11 down the path that it isn't accurate in terms of what her  
12 actual memory is. So we would ask that we have a short  
13 hearing to find out what she actually remembers.

14 THE COURT: I thought that the gist of the testimony  
15 had been provided.

16 MR. FOX: Right, and we had filed a motion that we  
17 have this hearing beforehand. We deferred ruling on that, and  
18 we are renewing our motion in that regard right now.

19 THE COURT: I thought I had ruled on that, had I not?  
20 I have to go back and check some of my --

21 MR. FOX: I think we decided that was the type of  
22 thing we could wait until the day of the testimony.

23 MR. BARTLETT: Your Honor, there's no need to have a  
24 hearing outside and waste the Court's time. She will  
25 testify -- if they think she is not eligible, they can make

1 their motion and objection at that point in time.

2 Ms. Tudder will get on the stand, she will use the New  
3 York Times article to refresh her memory, and we've gone over  
4 it and there's no question that I believe that her testimony  
5 will be admissible.

6 Excuse me. Mr. Fox made the argument with regard to this.  
7 I really don't want both of them making the argument on --

8 THE COURT: We've been through that before. Mr. Fox,  
9 is there anything to add to that?

10 MR. FOX: Well, Your Honor, she spoke to both  
11 Mr. Bloom and my investigator and she didn't remember the  
12 questions or the answers. I am vaguely familiar --

13 THE COURT: Mr. Bloom, would you let Mr. Fox -- I  
14 can't hear you both. I understand what you are saying.

15 MR. BLOOM: Your Honor --

16 THE COURT: Mr. Bloom, you are going to keep talking  
17 regardless of what I say.

18 MR. FOX: Well, it's very important what the question  
19 is so that we understand what the answer supposedly was or  
20 what it refers to.

21 THE COURT: The question -- I will have a hearing  
22 before we get to that point. You have a right to  
23 cross-examine and do a lot of things to test a person's  
24 memory, but let me look at that. I thought I had made a  
25 ruling on that. I want to look at that again. But whether I

1 have a hearing on that, I am not going to have two trials  
2 going on at the same time. I am not going to do that.

3 MR. FOX: Okay.

4 THE COURT: But I want to look at what you are saying  
5 because I want to approach it in a way that I think is fair to  
6 approach it. So all right. Then we will be back in recess,  
7 and I will see what I have on Ms. Tudder.

8 Then like I said, as to Corrina, I will probably wait  
9 until that time in there. But I think I understand the issue  
10 as to what you are both contending and why you are contending  
11 that, and I will handle it in that way.

12 MR. FOX: We also had proposed an instruction that we  
13 would ask the Court read to the jury this morning about  
14 cooperating witnesses. That's the pattern instruction -- and  
15 I think I took it from the prosecutor's packet, which I gave  
16 to Pat to send back --

17 THE COURT: Well, I haven't had a chance to look at  
18 that, but I think that -- and I will read an instruction as to  
19 how they are to view these, and at what point in time -- to do  
20 it piecemeal as you indicated, I might not want to do it that  
21 way, but I will look at it.

22 THE CLERK: All rise. Court is in recess.

23 (Brief recess.)

24 (Jury present.)

25 THE COURT: Ready for the next witness now.

1 MR. BARTLETT: Yes, Your Honor.

2 MR. FOX: Yes.

3 THE COURT: All right. Bring them in.

4 Who will this witness be?

5 MR. BARTLETT: Sarah Reichard.

6 (Jury present.)

7 THE COURT: You may be seated. Good morning to you.

8 I hope you had a nice three-day weekend and back ready to go.

9 All right, next witness.

10 MR. BARTLETT: Thank you, Your Honor. At this time,  
11 the United States calls Sarah Reichard to the stand.

12 THE COURT: Let me have you come forward and raise  
13 your right hand, if you would, please.

14 SARAH REICHARD, called as a witness, duly sworn.

15 THE COURT: Just come around and take the witness  
16 chair.

17 DIRECT EXAMINATION

18 BY MR. BARTLETT:

19 Q. Would you tell the members of the jury your first and last  
20 name and spell your last name for the Court Reporter.

21 A. My name is Sarah Reichard, R-E-I-C-H-A-R-D.

22 Q. Ms. Reichard, where were you born and raised?

23 A. I was born in New Orleans, Louisiana, but I was mostly  
24 raised in Winston-Salem, North Carolina.

25 Q. Where did you do your college?

1 **A.** I came out here -- when I turned 18, I moved out to  
2 Seattle. We lived here for a couple years when I was in  
3 junior high, and I liked it here. I came out and worked for a  
4 year and got residency so I could go to the University of  
5 Washington. So I got my bachelor's degree -- a bachelor of  
6 science in botany in 1981.

7 **Q.** After you got your BS in botany in 1981, what did you do  
8 career-wise?

9 **A.** I first worked managing a nursery and landscaping company  
10 for about four-and-a-half years and then I decided I wanted to  
11 go back to graduate school. So I went back to the University  
12 of Washington. The Center for Urban Horticulture had been  
13 started while I was gone, and I did a master's degree working  
14 on a plant, trying to unravel the evolution of a group of  
15 plants that are in Chile from Santiago down to Tierra Del  
16 Fuego.

17 I completed that in 1989, and then I decided -- when I was  
18 down in Chile, I had seen a lot of invasive plants, plants  
19 that were introduced that caused environmental problems.  
20 Things like we have here, Scotch Broom. They have Scotch  
21 Broom too, and I became interested in that and I decided I  
22 wanted to do a Ph.D. to study why some species become invasive  
23 and some don't, and I completed that in 1994.

24 **Q.** At the time that you were doing your doctoral work on  
25 invasive plants, I guess a lot of us have heard about that

1 now. Was this a new area?

2 **A.** It was very new. I started actually in 1988 when I came  
3 back from doing my fieldwork in Chile. I got really  
4 interested in it there, and even before I finished my  
5 master's, I started working on it, and there was really no  
6 literature at all.

7 There was a little bit on agriculture weeds. There was  
8 that kind of literature, but as far as national area problems,  
9 environmental problems, very little. So I am actually one of  
10 the first people who started working in that field.

11 **Q.** During the time that you were picking up your master's and  
12 eventually going on to complete your doctorate program, did  
13 you ever work at the University of Washington?

14 **A.** Yes. From pretty much soon after I started my master's  
15 right up to the time I finished my Ph.D., I worked for the  
16 University of Washington, mostly as a research assistant. I  
17 did a number of different jobs. Sometimes helping my major  
18 professor with his research. Mostly running a herbarium,  
19 which is a collection of pressed and dried plant specimens,  
20 kind of like a library of plant specimens, and then I also did  
21 some teaching for the University as well.

22 **Q.** How does that work? When you are a research assistant for  
23 the University of Washington, how are you paid? What kind of  
24 grants are you expected to get or not get?

25 **A.** Well, as just a research assistant, as a graduate student,



1 we don't really have to bring in grants. So I worked -- some  
2 of the money that I had came from the state. Running the  
3 herbarium was paid for by the University of Washington and  
4 some of it came from grants that we received.

5 **Q.** Are you still a research assistant?

6 **A.** No. So after I finished graduate school in 1994, I did a  
7 postdoctoral project, and that was a joint project mostly at  
8 the University of Washington but also at the University of  
9 Hawaii, trying to do some of the same things that I'd done for  
10 North American Invasive Species with Hawaiian invasive  
11 species.

12 So I did that for two years, and then I came back to the  
13 Center -- so I was based at the zoology department at the UW  
14 and not at the Center for Urban Horticulture during that  
15 period of time from '94 and '95. Then in early '96 -- no,  
16 '97 -- I came back to become a research assistant professor at  
17 the Center for Urban Horticulture.

18 **Q.** In 1997?

19 **A.** Yes, January 1997.

20 **Q.** What is a research assistant professor at the University  
21 of Washington?

22 **A.** So, professors are divided into sort of two camps. So  
23 what most people think of as a professor, which are the state  
24 funded professors that, you know, they have teaching as an  
25 important part of their responsibility. There are a small

1 group of professors that are considered to be research  
2 professors, and so we -- generally, a research professor  
3 doesn't teach, although they may teach in contract with the  
4 university, but they are not expected to teach. They pretty  
5 much just do research, and all of their research comes from  
6 grants that they get for themselves.

7 **Q.** So you actually didn't get a salary from the state, you  
8 were just depending on grants?

9 **A.** Not at that time. From 1997 until the Fall of 2001, I was  
10 a research assistant professor, so all of my money came from  
11 grants or from teaching, because I did also do some teaching  
12 for the UW, but again that was a class by class basis not a  
13 regular thing, and it was -- yeah, it was all from grants that  
14 I got.

15 **Q.** When did that change? When did your title at the U  
16 change?

17 **A.** In March of 2001, I was hired into a tenure track  
18 position, a state funded position. But that appointment, even  
19 though I was hired in March, the appointment didn't take place  
20 until September 15, 2001. So I was kind of in a transition  
21 period.

22 **Q.** What was the title? You went from a research assistant  
23 professor to --

24 **A.** To an assistant professor. Basically, it just meant that  
25 when you took the research away, you are still supposed to do

1 research, but it means that you are part now of the  
2 state-funded tenure track faculty.

3 **Q.** Is that your current title?

4 **A.** I am now an associate professor, so I have been promoted.

5 **Q.** During the time that you were working at the Center for  
6 Urban Horticulture, what different positions and what  
7 different jobs did you do down there?

8 **A.** Well, at the time that the fire happened, I was just a  
9 research assistant professor, so I was mostly doing research  
10 and then some teaching. Once I got the state-funded position,  
11 I did have some additional responsibilities. I curated the  
12 herbarium, which is the herbarium that I worked at when I was  
13 a graduate student.

14 I now was in charge of it, as a curator. Then I also  
15 started a conservation program for the University of  
16 Washington Botanic Gardens which the Center for Urban  
17 Horticulture is now a part of, and so I am the director of  
18 this conservation program.

19 **Q.** What is the program?

20 **A.** We call it rare care or rare plant care and conservation,  
21 and we work to conserve Washington's rare plants. So we do  
22 research on rare plants, but we also have a very large program  
23 where we train volunteers, people that are interested in  
24 education about plants all over the state, to monitor rare  
25 plant populations because the state has a monitoring program

1 in the National Heritage Program, which is part of the  
2 Department of Natural Resources, but they are understaffed so  
3 they estimate that any given rare plant population only gets  
4 monitored once every 10 years, and a lot of bad things can  
5 happen to the populations over that period.

6 So what we do is we train volunteers in how you go out and  
7 look at the population to assess the health of the population.  
8 They give the data back to us, and then we give it to the land  
9 managers so they can manage those populations better. And  
10 then we also have a seed vault which is a secure seed storage  
11 facility. It's 150 square feet. It has four-hour fire walls,  
12 and we can collect seeds of rare plants and store them there  
13 for long-term protection.

14 **Q.** How many rare plant species does your group monitor in the  
15 State of Washington?

16 **A.** So far we've monitored about 400 populations. The program  
17 has grown since we started it. It started in 2001. So it's  
18 been growing, and I think we've done about 200 species and  
19 about 400 populations total.

20 **Q.** You talked earlier about obtaining grants so you could get  
21 paid and you could fund some of the research you've done. I  
22 want to direct your attention specifically to grants that you  
23 had obtained and were being paid through during May of 2001.

24 Can we focus on that?

25 **A.** (Indicating affirmatively.)

1 Q. If you could take a look at Government's 354 and tell me  
2 if you recognize that.

3 A. It's a list of the grants that I had at the time.

4 MR. BARTLETT: Your Honor, I would like to offer  
5 Exhibit 354k.

6 MR. FOX: No objection.

7 THE COURT: Admitted.

8 (Exhibit No. 354 admitted.)

9 BY MR. BARTLETT:

10 Q. It's pretty hard to read, perhaps you can take us through.  
11 During May of 2001, what -- and if I could direct your  
12 attention specifically to federal grants, money where you were  
13 receiving money from the federal government -- were you  
14 working under at that point in time?

15 A. I had three at that time. The first was funding from the  
16 Bureau of Land Management, which is a federal agency in the  
17 Department of Interior. The money came through the National  
18 Fish and Wildlife Foundation, so they gave the money to the  
19 National Fish and Wildlife Foundation who gave it to me, and  
20 that was to start the rare plant monitoring program. So we  
21 were just beginning that project at that time.

22 So that was the money that was allowing us to develop what  
23 we call quality assurance protocols, so when we train the  
24 volunteers and we send them out, we know they are collecting  
25 quality data.

1 Q. For the record, when did you obtain that grant? How long  
2 did it last and how much was it?

3 A. It was -- it started on February 1, 2001 and was completed  
4 on April 30, 2002, and it was \$20,000.

5 Q. It's kind of hard, but if you reach over and touch the  
6 screen, you can actually make a little arrow show up.

7 Do you actually see that grant there?

8 A. I do. I will see if I can do it.

9 Yes, that's it.

10 Q. In addition to that grant, what other money were you  
11 receiving from the federal government?

12 A. I had two grants from the U.S. Department of Agriculture.  
13 The U.S. Department of Agriculture is the federal agency  
14 that's charged with monitoring what plants come into the  
15 country, and what I work on is risk assessment. A big part of  
16 what I worked on is risk assessment, trying to determine which  
17 species will become invasive and which weren't.

18 They were interested in having me do some work for them.  
19 So I had one of them that was awarded on August 14, 2000, with  
20 completion on August 13, 2001, and that was for \$13,326. That  
21 was money that came directly from the office of the secretary  
22 in the Department of Agriculture.

23 They had, I think it was, eight species that they were  
24 considering adding to the federal noxious weed list, and they  
25 wanted me to -- usually they have a staff botanist do it, but

1 because of my expertise and some other issues they had, they  
2 wanted me to do the evaluations for them and so that funding  
3 was to do the evaluation for those eight species.

4 **Q.** Do you see the Department of Agriculture grant, the  
5 \$13,326 grant?

6 **A.** Yes, I do.

7 **Q.** Now, you've talked about -- most grants -- I assume a  
8 bunch of people put in requests for it and they ask for the  
9 money and they choose one.

10 Is that what happened in this grant?

11 **A.** No. They came to me and said, would you be willing to do  
12 this, and I said sure, I would be happy to do it. I was  
13 living off of grants at that time so if people were going to  
14 offer me money, I was going to take it.

15 When you are a research professor, when you are any kind  
16 of professor, but especially research and you are trying to  
17 fund your own salary, the reality is that you are not just  
18 funding your own salary because as you get going, you can't  
19 just -- if you are writing proposals for the next bit of  
20 funding, then you have to have somebody else doing the work  
21 from the last grant so you can be writing proposals for the  
22 next grant.

23 So you are constantly getting grants to fund your graduate  
24 students and your staff. So yeah, if somebody offers me  
25 money, especially something that's easy for me to do, I am

1 going to take it.

2 Q. Did you have a third grant at that point in time from the  
3 federal government?

4 A. Yeah, I also had another grant from the Department of  
5 Agriculture, and this one was a competitive grant. So this is  
6 one where lots and lots of people apply and just a few people  
7 get it. I think their funding rate was about 25 percent, or  
8 at least it was at that time.

9 That one was a longer-term project. It was awarded on  
10 August 1, 1998, and then it was due for completion on July 31,  
11 2002, but because of the fire, I had to get a couple other  
12 extensions so it actually didn't get completed until 2004, and  
13 that was for \$88,693.

14 Q. What was that involving?

15 A. That was to develop -- most of my work has been done on  
16 woody plant species, shrubs and trees and woody vines.

17 That was to develop methods for assessing the risk of  
18 herbaceous plants, so non-woody plants so that they could use  
19 those methods when they were considering bringing something  
20 into the country.

21 Q. If you could make a mark near where that grant is listed.

22 A. Somewhere in there, right below the other one.

23 Q. How many people -- how many assistant professors --  
24 research assistants work at the Center for Urban Horticulture?

25 A. At the time of the fire, there were five of us that had



1 our offices full time at the Center for Urban Horticulture,  
2 and then four of us who had labs there. One had their  
3 office -- Tom Hinckley had his lab up on the main campus, and  
4 then there were three faculty members who had part-time  
5 offices there, so they had offices in other places, but they  
6 also had an office with us.

7 Q. I assume you know all the people there?

8 A. Yes.

9 Q. And talked with them?

10 A. Yes.

11 Q. Could you explain to the members of the jury, of the  
12 people, the professors, the assistant professors that were  
13 working down there, was everyone involved in getting grants?

14 A. Yeah, yeah. Even if you are a state-funded faculty, you  
15 are expected to bring in grants. So when you are state-funded  
16 faculty, what that means is they pay our salary for nine  
17 months out of the year. But if you want Summer salary, if you  
18 want to get paid during the Summer, you have to bring in your  
19 own salary.

20 Your graduate students, and then as I said, pretty much as  
21 you get going you have to have staff to manage things for you,  
22 so you end up having to do all of that. So yeah, I am sure  
23 all of them -- well, actually all of them did have grants at  
24 the time.

25 Q. Can you explain to the members of the jury, when you get

1 -- like, for example you've talked about an \$88,000 grant  
2 from the Department of Agriculture -- do you get a check sent  
3 to you personally?

4 **A.** No, they don't do it that way. They send it to the Office  
5 of Sponsored Projects, which is the office that deals with  
6 such things, and they set up the budgets for it, and there's  
7 people who manage the budgets, help us manage the budgets.  
8 It's ultimately our responsibility.

9       So it all goes to them. I can't contract for the  
10 University of Washington, only the Office of Sponsored  
11 Projects can sign a contract for the UW.

12 **Q.** Does the UW take a cut of your grants as they come through  
13 the door?

14 **A.** It depends on the grant. So Department of Agriculture has  
15 negotiated a special rate, and it varies per year. I think  
16 the year that I got the \$88,000 one, it was 14 percent. It  
17 can be as high with some grants 53 percent, it just depends on  
18 who the grantor is.

19       The National Fish and Wildlife Foundation doesn't pay  
20 those kinds of indirect costs, so in that case there was  
21 nothing coming out of that one at all, it went into my  
22 project. So it just kind of varies.

23 **Q.** I want to change topics. I want to focus your attention  
24 to May 21 of 2001. Can you explain to the members of the  
25 jury, what were you doing at that point in time?

1 **A.** So I was a research assistant professor, but I was  
2 teaching a couple classes, and it was right at the end of the  
3 academic year. The academic year officially ends June 15th,  
4 but classes usually end a week or so before that.

5 So that morning, my husband was out of town helping his  
6 mom in California, and I woke up early -- I usually do. I  
7 probably woke up around 5:00. It was a really pretty day that  
8 day, and it was dawn and there was a robin singing in the  
9 tree, and it was very nice and I was thinking about my classes  
10 and what I needed to do to finish up things, and the phone  
11 rang downstairs, and I heard it ring -- I thought it was  
12 probably my sister on the East Coast who's never quite figured  
13 out the time change, so I just let the machine pick it up and  
14 then a little bit later I got up and went downstairs and  
15 checked it. It was probably getting close to 5:30 at that  
16 point, and the message was from my colleague Linda  
17 Chalker-Scott who has a lab in the building, too.

18 **Q.** When you say in the building too?

19 **A.** In Merrill Hall. The message just said the lab is on fire  
20 and I am going down there, and that's all it said. And I had  
21 been in working on Sunday afternoon, the day before, and I had  
22 seen one of her graduate students there. She was trying to  
23 finish up her master's degree and was going into a Ph.D.  
24 program on the East Coast, and we talked for a while and she  
25 told me she was going to be working late trying to get a bunch

1 of work done in the lab.

2 So I thought oh, my gosh, she left something on, Linda's  
3 lab is on fire, but it didn't really occur to me what Linda  
4 meant. I called up Linda's husband Jim at home and asked him,  
5 and said how bad is it, I got the message, and he said turn on  
6 the TV. So I turned on the TV, Channel 5, and there was  
7 Merrill Hall with flames -- the end of the building where my  
8 office was, so I just said to Jim, oh, my God, I am going to  
9 go down there and tell her if she calls, and I hung up.

10 **Q.** Where did you go?

11 **A.** So I got dressed and grabbed my keys and drove over. We  
12 live west of the University, and the Center for Urban  
13 Horticulture is east of the University, and as soon as I got  
14 to the U District, I could smell and see smoke, and we were  
15 still a couple miles away so I knew it really wasn't very  
16 good.

17 And then there were fire trucks coming back because the  
18 rest of the fire had been put out so they were letting some of  
19 the firemen go. So I was passing some of the fire trucks. I  
20 got within a couple of blocks of the Center, and the streets  
21 were marked off, and so I got out of the car and I just ran  
22 until I found Linda and the others.

23 **Q.** Where were they?

24 **A.** They were in a parking lot east of the building.

25 **Q.** Did you eventually walk around to the back of the

1 building?

2 **A.** Yeah, yeah, we did. At first, the firemen wouldn't let us  
3 anywhere near it, and then we figured out that the fenced  
4 nursery area behind, that we could go into that fenced area  
5 behind and then we could see the back of the building.

6 **Q.** If you could take a look at an exhibit already admitted in  
7 front of you, Exhibit 305.

8 This is a schematic. Does that in general terms represent  
9 how the Center for Urban Horticulture was set up?

10 **A.** Yes, it does.

11 **Q.** Can you just kind of briefly walk us through the different  
12 buildings and areas.

13 **A.** Okay. So the main building where all of the offices and  
14 labs are is Merrill Hall, and the library adjoins it so it's  
15 not really separate like it looks like in this diagram. The  
16 library is all part of it.

17 Merrill Hall is two stories. It's built into a hill so  
18 you enter from the McVay Courtyard, which is an open courtyard  
19 area, into the lobby area, and then you could go downstairs to  
20 where the academic floor was, the offices and labs, which is  
21 also on the ground floor since it's built into a hill.

22 So then the Miller Library, you could also enter that off  
23 the main lobby on the first floor, and below the Miller  
24 Library was the Otis Douglas Hyde Herbarium, which is the  
25 herbarium that I curate. Then across the way is NHS Hall

1 which is a public meeting space for anybody who wants to meet  
2 there. We do a lot of weddings and funerals and that kind of  
3 thing there too.

4 Q. If you would look at another exhibit that's not been  
5 admitted. Exhibit 306, which I believe is in the folder in  
6 front of you.

7 Do you recognize that?

8 A. Yeah, this is a diagram of the lower level.

9 Q. Of Merrill Hall?

10 A. Of Merrill Hall.

11 Q. Is that an accurate diagram?

12 A. Yes.

13 MR. BARTLETT: I would like to offer Exhibit 306.

14 MR. FOX: No objection.

15 THE COURT: Admitted.

16 (Exhibit No. 306 admitted.)

17 BY MR. BARTLETT:

18 Q. Could you kind of walk us through what we are looking at  
19 here, where Toby Bradshaw's office is, where your office is,  
20 what the other areas are that existed in Merrill Hall in May  
21 of 2001.

22 A. Right. So Toby's office is right there. He was right in  
23 the middle of the building there, and then his lab was  
24 directly across from that. My office was on the far end of  
25 the building right there, and then my main laboratory was

1 directly across from my office.

2 I also managed the tissue culture laboratories for plant  
3 propagation, which was here and then part of that -- part of  
4 the second larger room is storage, and part of it is for  
5 growing out the plants.

6 Q. If I could stop you just a second.

7 A. Okay.

8 Q. You've talked about a laboratory. You talked about tissue  
9 propagation. What are we talking about?

10 A. Tissue culture is -- it's a lot like taking a cutting,  
11 really, only it's a little bit fancier than that. So when you  
12 take a cutting of a plant, you take a strip of the stem and  
13 you dip it in a growth hormone, and then you put it in soil or  
14 sand or something.

15 When you are doing tissue culture, if you take a little  
16 piece of tissue -- in this case, stem tissue -- of plants and  
17 you put it on -- it's just a little chunk of stem, and you put  
18 it on a medium, it's kind of like jello or jelly, that has  
19 hormones and nutrients, and you get the piece of tissue to  
20 form chutes.

21 Once it has chutes, you put it on a different kind of  
22 agar, a different medium, that has hormones that induce  
23 roots, and then you get little plants out of it. I was  
24 working on a plant called *Hackelia venusta* or showy stickseed,  
25 which is Washington's rarest plant. There's only one

1 population left in the state, and it's in a pretty precarious  
2 situation up in the North Cascades.

3       So the U.S. Fish and Wildlife Service had asked me to look  
4 at the propagation of it. They are the agency that manages  
5 rare plants in this country, and they had asked me to figure  
6 out if I could tissue culture it because they thought it  
7 couldn't be reproduced from seeds, and so we were working on  
8 the methods for that and how you could tissue culture them and  
9 had managed to get some success with it.

10 **Q.** Where else -- if you just look around, what other labs  
11 were you involved in?

12 **A.** I already touched on the herbarium, but I will touch it  
13 again. That's the sort of library of dried plant specimens  
14 that I curated.

15 **Q.** In May of 2001, in addition to your own work and the work  
16 of Toby Bradshaw, were you working with any research  
17 assistants?

18 **A.** Yeah. I had a research assistant who helped me manage the  
19 herbarium. I had a research assistant working on the large  
20 USDA grant. I had a research assistant working on the smaller  
21 USDA grant. I am trying to think if I had any others. I know  
22 I had those three.

23 **Q.** When you had research assistants, obviously they are not  
24 making much money?

25 **A.** (Indicating negatively.)



1 Q. I assume most of them were working on either a master or  
2 doctoral program?

3 A. Yes.

4 Q. Are there points in time when, for example, you and  
5 perhaps your research assistants had to work more than the  
6 9:00 to 5:00 job?

7 A. Yeah. You know, people don't go into academia expecting  
8 to work a 9:00 to 5:00 job. We do what we do because we  
9 really love it and because we are excited about it. I don't  
10 think any of us really work 9:00 to 5:00.

11 It's expected that graduate students in particular and  
12 junior faculty like I was at the time are really -- you are  
13 really supposed to show that you are working hard and worth  
14 it. So yeah, it was very common. I am more of a morning  
15 person in a lot of ways, so I don't really work very late at  
16 night, but a lot of the graduate students would work all  
17 night.

18 Q. When grad students would work all night, generally where  
19 would they be involved? Would they be sitting in -- for  
20 example, did they take over Toby Bradshaw's office or your  
21 office? Or are they back in the labs or in both?

22 A. Both. I don't know about Toby. I don't think Toby, but  
23 Linda Chalker-Scott and I both had sofas in our offices, full  
24 length sofas, so that people could take a nap if they needed  
25 to.

1        There was also sofas in the graduate room which was not in  
2 Merrill Hall. It was in the adjoining Isaacson Hall, which  
3 wasn't on the diagram that you showed me, but on the other  
4 side of the McVay Courtyard. So they might be in the labs or  
5 in the office taking a nap. They might be anywhere in the  
6 building. They had full access.

7 **Q.** You've talked about arriving there in the early morning  
8 hours of May 21st. Are you eventually let into your office and  
9 into your labs?

10 **A.** It was a couple of days before we got in there. I think  
11 it was probably the 23rd. I am not completely sure, but I  
12 think it was the 23rd before they let us in because it was a  
13 crime scene, and they needed to investigate it, and then also  
14 they were worried about the structural integrity of the  
15 building.

16        So they finally did let us in -- I think it was Wednesday  
17 -- and they originally said you have 15 minutes to get  
18 everything you need because they were worried about the  
19 building. So they would let each of us go in, and it was like  
20 what do I grab in 15 minutes.

21 **Q.** Can you describe your office when you got in there the  
22 first time.

23 **A.** It was a mess. The whole building was a mess. I was  
24 pretty far from Toby's office, so the damage in my office and  
25 especially in the lab, my main lab directly across from my

1 office, was not really fire damaged. It was a lot of water  
2 because the fire had traveled -- it had got up into the roof  
3 of the building and traveled along the spine of the roof to  
4 over the library, which is -- the herbarium and my lab were  
5 under where the laboratory was, so a lot of water got dumped  
6 on it. So there was tremendous water damage and then there  
7 was also a lot of soot. The soot was very acidic so there was  
8 soot everywhere on things in my office. There's still soot in  
9 my file folders.

10 **Q.** How about your labs?

11 **A.** The labs were -- the main lab, again, lots and lots of  
12 water. Pretty much anything that was out was destroyed by all  
13 the water damage to it.

14 The hardest thing for me was I had a slide sorting table  
15 that my husband had built me in my laboratory, and this was a  
16 few years ago, so we weren't all digital then, so I had all my  
17 slides laying out on there because I didn't file them away  
18 always right away after I finished teaching or lecturing. I'd  
19 just take them out of the care zone and put them on the thing  
20 until I had time to do it, and they were all laying out there,  
21 so they got a lot of water and this very acidic soot on them,  
22 and the ash etched them.

23 So I lost a lot of slides, which is really hard because  
24 that's documentation of your work that you collected over  
25 years and years and years and when you lose something like

1 that, it's just not replaceable.

2 The other laboratory was more towards the center of the  
3 building where there was a lot of heat. So in that case,  
4 there wasn't a lot of fire damage but the heat was quite  
5 intense because the paint had actually slid down the walls,  
6 kind of melted down the wall. And then that's where my little  
7 plants were, my tissue culture plants, so they were just  
8 cooked.

9 Q. Destroyed?

10 A. Destroyed.

11 Q. You've described your work in the week prior where you are  
12 teaching classes, you've got things going on. How does the  
13 fire impact your work at the University of Washington?

14 A. Well, the teaching -- I was teaching actually two classes  
15 even though I was a research professor at this time, so I was  
16 teaching a class, a graduate level class in biological  
17 invasions.

18 That class -- I couldn't be teaching it because I didn't  
19 have any of my lecture notes, my slides. I didn't have any  
20 way to teach it, plus I was pretty much not in the mental  
21 state to be able to actually coherently lecture to students.

22 So with that class, I just canceled it and told the  
23 students -- I only had a few more lectures anyway, and they  
24 had a big project due, so I just told them to finish up your  
25 project and turn it in.

1       The other class I was teaching was plant identification,  
2 and I had a co-teacher, co-instructor, as well as a teaching  
3 assistant for that class, so they very generously said don't  
4 worry about it, we will take care of things. So they  
5 continued teaching for me.

6       Research, you know, again was very difficult to do for  
7 some time. I mean, for one thing, they took everything away  
8 from me. The University hired a company to come in and take  
9 all the books and papers because everything was wet and  
10 everything smelled like smoke. So they took it somewhere; I  
11 don't know where. Everybody had everything taken.

12       They took them to have the books freeze dried to dry them,  
13 and then ozoned to get the scent out. Freeze drying didn't  
14 really work very well for things that were really wet, they  
15 were just pulp. They weren't usable. So I lost a lot of  
16 books and papers.

17       And for an academic, this is -- you know, we -- everyone  
18 of us has our unique research specialty, and we pull together  
19 all the papers and the books that support our work, so a lot  
20 of the things you amass -- like the slides, you amass them  
21 over decades, so they are not easily replaceable.

22       But I did finally -- so they took all the papers away. I  
23 got them back sometime in the early Fall, about the time that  
24 Fall quarter started up again, but some things were missing.  
25 I never got them back. Then the whole next year was just

1 chaotic. We were in trailers --

2 **Q.** Why is that? You got your books and stuff, the little  
3 things back in the Fall of 2001. Don't you get your office  
4 back?

5 **A.** Well, no. The building was destroyed so they had to pull  
6 it down. It wasn't salvageable. So they brought in trailers  
7 for each of us, so each faculty member had our own trailer  
8 that was for us and for our staff and maybe a graduate  
9 student, if we could fit them.

10 Most of the graduate students -- they brought in another  
11 trailer for the graduate students that were out there. And  
12 then I didn't have a lab, so one of the botany professors was  
13 very generous about letting my students use her lab during  
14 that time.

15 **Q.** Can you explain to the members of the jury -- you said  
16 that you were kind of on tenure track at this point in time.  
17 Is that automatic? In other words, once you get on the track,  
18 you are for sure going to get tenure?

19 **A.** No, not at all. So once I got hired as a state-funded  
20 faculty member, that puts me on a tenure track, and that means  
21 after five years -- it's usually five years; it sort of  
22 depends on the person -- usually after five years, you are  
23 evaluated, and it's not just the University that evaluates  
24 you. You prepare what's called a tenure package, and they  
25 send it out to people all over the country to look at it to

1 see if you are of sufficient scholarship to be hired and  
2 promoted.

3       So once you serve your sort of five-year apprenticeship,  
4 and then you go up for tenure, if you get it, that means the  
5 University cannot fire you without cause. It's to protect our  
6 academic freedom so that we can do research on things that may  
7 be unpopular with administration.

8       It's not automatic that you get tenure. In fact, the two  
9 people who had come up in my college for tenure before me had  
10 not gotten it, so I was a little bit freaked out about getting  
11 tenure. I thought I would work hard and be good, but you just  
12 never know. There's people evaluating it all over the  
13 country.

14 **Q.** Does this fire affect your ability to prepare a tenure  
15 packet?

16 **A.** Yes. So the tenure packet divides into three things, your  
17 teaching, your research and your service, service to the  
18 University as well as service to your profession, serving on  
19 committees, things like that.

20       So the research one in particular was of concern to me  
21 because things were chaotic that year. I mean, I didn't have  
22 an office. I didn't have a lab. We were trying to figure out  
23 are we going to rebuild, where was the money going to come  
24 from. First, it looked like there wasn't enough money to  
25 rebuild so there was a lot of drama around that, a lot of

1 things going on.

2       So the ability to focus on my research didn't happen for  
3 at least a year. I can remember there was a day in June 2002  
4 where I was sitting in my trailer working on a paper, and I  
5 suddenly felt this really kind of lightheaded feeling of wow,  
6 I am being productive, this is what it feels like, I haven't  
7 felt like this in over a year. So I pretty much lost a year  
8 in that tenure, five-year package.

9       I did have a very good faculty chair who went to the  
10 provost and got me an extension because of the circumstances,  
11 so I did end up with an extra year and was able to recover  
12 from that.

13 **Q.** You've talked about the professional impact the arsons had  
14 on you and your work at the University of Washington. Did it  
15 have any personal impact on you?

16 **A.** Yeah, it did. I am always amazed when people refer to  
17 what happened to us as a property crime because I can't  
18 conceive of the kind of mind that would think that the only  
19 way that you can cause pain and suffering is through physical  
20 distress. There are a lot of ways to hurt people, and I am  
21 just one of them.

22       So I am a pretty upbeat person. You have to be when you  
23 are a conservation biologist. You have to believe that you  
24 can make a difference and be upbeat. That Summer in 2001, I  
25 had times when I just didn't want to live anymore, where I



1 just felt like the effort to rebuild my career was too much,  
2 and I just couldn't do it. So that was really hard.

3 I started having panic attacks which I have never had  
4 before. The first one was that Wednesday, the 23rd, after the  
5 fire, and I had done an interview for KOMO TV. It was the  
6 first time I had done something like that, and I was wearing a  
7 T-shirt that day. It was kind of distinctive, it was an art  
8 piece, and my husband still wasn't home, and I thought -- I  
9 was there until after dark, and I thought I'd stop off at the  
10 Safeway in the U District and get something to eat.

11 So I went into the Safeway, and it was really brightly  
12 lit, and I was wearing this T-shirt, and I knew that the bit  
13 had aired on KOMO, and it was full of University students  
14 because it was the U District, and I felt like they were all  
15 looking at me and that they were all people from ELF, and that  
16 they all knew who I was and that I had pointed out the harm  
17 that they had done to my work and to the rare plants that I  
18 work with.

19 I got really freaked out, and I ran out of the building  
20 and got in my car and drove away. I went home, ultimately,  
21 and Bryan still wasn't home. I went over to my next-door  
22 neighbor's house because I didn't want to be alone, and I told  
23 her what had happened, and her daughter had had panic attacks  
24 when she was a teenager, and so she told me that's what it  
25 was. I didn't even have the vocabulary to know what was going

1 on with me, and I had more after that.

2       The worst one was probably -- we were looking to move from  
3 our house anyway, and we wanted a bigger house and bigger  
4 yard, a bigger garden for me, so we put a bid on a house just  
5 a couple weeks after the fire, and we moved in in early Fall,  
6 and we'd been in there maybe five or six weeks. We had barely  
7 done the change of address stuff yet. It was a Friday night  
8 about 7:00, and this young man came to the door, and he was  
9 neatly dressed and nice. I didn't open the door, but there's  
10 a glass pane, and we could see each other and hear each other,  
11 and he says are you Sarah Reichard?

12       I said, "Who are you?" He says, "Well, I am canvassing  
13 for Green Peace, and you've given money to us before," and I  
14 have never given money to Green Peace. They are a little too  
15 radical for me actually. So I said no, and I was really  
16 freaked out and he left. I am sure he thought I was insane.  
17 And I probably was.

18       So I called up my husband to see if he was coming home yet  
19 and he had just left. He worked about a half hour away, so he  
20 was still a ways away, and I was convinced that this guy --  
21 how did he know my name and why did he say I had given money  
22 to Green Peace and that they were out there some place and  
23 they were going to burn my house down.

24       So I got the phone and I just sat there on the floor in a  
25 place where no one could see in the window, ready to call 911

1 in case something happened. We hadn't lived there very long  
2 and so I didn't really know all the sounds of the house, and  
3 so every little sound that I heard I thought somebody was out  
4 there.

5 I called my husband a couple more times saying are you  
6 here yet, where are you, and he got there and it was nothing,  
7 of course. And it was Friday, so I had to wait until Monday  
8 and I called Green Peace's office to ask about a canvasser and  
9 they said they had somebody in the area and it turns out that  
10 they shared lists with the Washington Public Interest Research  
11 Group which I have given money to before, so it was all really  
12 innocent.

13 But I went from a person who had no problem doing  
14 fieldwork and traveling alone in Chile during an era when it  
15 was ruled by a military dictator, to sitting on my floor  
16 clutching a phone. So yeah, I would say it had a pretty  
17 profound effect on me emotionally and personally, and I would  
18 say I was hurt by it.

19 Q. Nothing further.

20 Thank you, Ms. Reichard.

21 CROSS-EXAMINATION

22 BY MR. FOX:

23 Q. Good morning, Ms. Reichard. I am Neil Fox helping  
24 Ms. Briana Waters. This was a pretty traumatic event for you;  
25 is that true?

1 A. I would say so.

2 Q. We are very sorry for the trauma. Thank you very much.

3 A. Really.

4 Q. Yes.

5 A. I saw your video on you too where you said this was a  
6 property crime.

7 MR. FOX: Your Honor, I would ask that that matter be  
8 stricken from the record.

9 THE COURT: It will be. It's stricken.

10 MR. BARTLETT: At this time, the United States calls  
11 Tiffany Tudder to the stand.

12 THE COURT: Mr. Fox, my record reflects that I  
13 previously ruled on that so I will allow that to stay in.

14 Let me have you come forward and raise your right hand and  
15 be sworn.

16 TIFFANY TUDDER, called as a witness, duly sworn.

17 THE COURT: Come around and take the witness chair.

18 MR. BARTLETT: May I inquire, Your Honor?

19 THE COURT: Yes.

20 DIRECT EXAMINATION

21 BY MR. BARTLETT:

22 Q. Could you tell the members of the jury your first and last  
23 name and spell your last name for the Court Reporter.

24 A. Tiffany Tudder, T-U-D-D-E-R.

25 Q. Good morning, Ms. Tudder.

1   **A.**   Good morni ng.

2   **Q.**   Can you tell the members of the jury a l i t t l e b i t a b o u t  
3   yoursel f, where you were born and raised, where you went to  
4   high school .

5   **A.**   I was born in Silsbee, Texas, and I grew up in Bellevue,  
6   Washington. I went to high school at Interlake High School in  
7   Bellevue.

8   **Q.**   When did you graduate from Interlake High School in  
9   Bellevue?

10   **A.**   1987.

11   **Q.**   After graduating, did you go to college?

12   **A.**   Yes.

13   **Q.**   Where?

14   **A.**   Evergreen State College.

15   **Q.**   In Olympia?

16   **A.**   Yes.

17   **Q.**   During the time that you were at Evergreen, what was your  
18   primary area of study?

19   **A.**   Mostly film.

20   **Q.**   Did you graduate?

21   **A.**   Yes.

22   **Q.**   When was that?

23   **A.**   2001.

24   **Q.**   What was your official degree when you graduated from  
25   Evergreen in 2001?

1   **A.**   A Bachelor of Liberal Arts.

2   **Q.**   Where are you living currently? Not your specific  
3 address, the city.

4   **A.**   I live in Brooklyn, New York.

5   **Q.**   What do you do in New York?

6   **A.**   I work in nonprofit development.

7   **Q.**   During the time -- the four years that you spent at  
8 Evergreen College in Olympia, in addition to your normal class  
9 work and friends, were you involved in any organizations down  
10 there?

11   **A.**   Yes.

12   **Q.**   Could you tell us --

13   **A.**   The Evergreen Animal Rights Network.

14   **Q.**   At the time that you were involved in the Evergreen Animal  
15 Rights Network, did you know Briana Waters?

16   **A.**   Yes.

17   **Q.**   Do you see her in court?

18   **A.**   Yes.

19               MR. BARTLETT: For the record, the witness has  
20 identified the Defendant.

21               THE COURT: It will.

22 BY MR. BARTLETT:

23   **Q.**   Can you explain your relationship with Briana? Close  
24 friends, barely knew her or something in between?

25   **A.**   We were friends, not close, but we did a lot of things

1 together with the group.

2 Q. In addition to knowing Ms. Waters, did you also know her  
3 boyfriend?

4 A. Yes.

5 Q. What was his name?

6 A. Justin.

7 Q. Could you take a look at Exhibit 115. I think it is going  
8 to show up on a screen in front of you. There's a lot of red  
9 arrows. Could you point the little exit button on the left  
10 lower part of that screen. There you go.

11 Do you recognize that photo?

12 A. Yes.

13 Q. Is that her boyfriend Justin Solondz?

14 A. Yes.

15 Q. Did you know him at Evergreen in other areas?

16 A. I knew him from being with Briana, and then I took a  
17 couple classes and he was in my class.

18 Q. What kind of class?

19 A. It's a Brazilian dance, martial arts.

20 Q. In addition to Ms. Waters and Mr. Solondz, did you also  
21 know a Chris Dickinson?

22 A. Yes.

23 Q. How did you know him?

24 A. He was my friend's boyfriend.

25 Q. Can I direct your attention to the Fall, November of 1998.

1 You were going to Evergreen at that point in time?

2 **A.** Yes.

3 **Q.** You were involved in the Evergreen Animal Rights Network?

4 **A.** Yep.

5 **Q.** Did there come a time when a person named Craig Rosebraugh  
6 was invited to give a talk at Evergreen?

7 **A.** Yes.

8 **Q.** Did you invite him?

9 **A.** Our group did.

10 **Q.** The Evergreen Animal Rights Network?

11 **A.** Yes.

12 **Q.** Did you attend that lecture?

13 **A.** Yes.

14 **Q.** Could you describe him for the jury.

15 **A.** He was set up in the main area of school, kind of in  
16 between like the library and the computer area, and I remember  
17 there was tables set up, and it was mostly over by those  
18 tables.

19 **Q.** How many people attended the lecture?

20 **A.** I don't know, maybe 30.

21 **Q.** Can you just generally remember how long it lasted?

22 **A.** Maybe half an hour.

23 **Q.** After Mr. Rosebraugh completed his lecture on that  
24 morning, did a person come over and talk with you?

25 **A.** Yes.



1 Q. At the time that this person was talking to you, where was  
2 Ms. Waters?

3 A. She was near me.

4 Q. A reporter?

5 A. Yes.

6 Q. After this reporter talked to you, did there come a point  
7 in time that not only a reporter was talking to you but an  
8 article was written?

9 A. Yes.

10 Q. Tell the jury how you heard about that.

11 A. A friend of mine was actually at his parents' house in  
12 Florida and called me and said: You are in the New York  
13 Times, and I was like really, because I kind of forgot about  
14 it, and he told me about it.

15 Q. Did you eventually see that article in 1998?

16 A. Yes.

17 Q. Had you ever had your name in the New York Times before?

18 A. Not that I am aware of.

19 Q. When you read it, at the time you read it, was it an  
20 accurate depiction of the conversation?

21 A. Yes.

22 BY MR. BARTLETT: Could the witness be handed what's  
23 been previously marked as Government's Exhibit 740-C.

24 BY MR. BARTLETT:

25 Q. If you turn to page 5 of that article, do you see a brief

1 section that depicts statements you made -- the question asked  
2 and statements Ms. Waters made to this reporter on that day?

3 **A.** Yes.

4 **MR. BLOOM:** Objection.

5 **THE COURT:** It is noted. You may answer

6 **Q.** I couldn't hear you.

7 **A.** Yes.

8 **BY MR. BARTLETT:**

9 **Q.** Do those statements, including your statements, the  
10 reporter's statements and Ms. Waters' statements, they are  
11 accurate?

12 **A.** Yes.

13 **MR. BARTLETT:** Your Honor, I would like to offer just  
14 this portion of the article pertaining to the conversation  
15 between Ms. Tudder, Mr. Sullivan, the reporter, and  
16 Ms. Waters.

17 **MR. BLOOM:** May I have a voir dire on that question,  
18 please?

19 **THE COURT:** Give me the page number again.

20 **MR. BARTLETT:** It's page 5.

21 **BY MR. BARTLETT:**

22 **Q.** Now, Ms. Tudder, I assume that as you sit here, you can't  
23 independently remember exactly what was asked and answered?

24 **A.** No.

25 **Q.** But as you read this, it refreshes your recollection as to

1 the questions asked --

2 MR. BLOOM: Excuse me, I am going to object --

3 THE COURT: Just a second. He wants to voir dire.  
4 Show me exactly what we are talking about on page 5.

5 MR. BARTLETT: There is a portion of the thing -- of  
6 the article that begins, "The talk was sponsored by EARN, the  
7 Evergreen Animal Rights Network," and then there is a quote  
8 from Ms. Tudder --

9 THE COURT: All right. It's down to the end of that  
10 quote?

11 MR. BARTLETT: Going down to the quotations from  
12 Ms. Waters, which are --

13 THE COURT: To the end. All right. Mr. Bloom, now  
14 you want to --

15 MR. BLOOM: Just a few questions, yes.

16 VOIR DIRE EXAMINATION

17 BY MR. BLOOM:

18 Q. Good morning. I am Robert Bloom, and I am one of the  
19 attorneys for Briana Waters. We met in the hallway very  
20 briefly. I just said hello, right?

21 A. Yes.

22 Q. Other than that, we talked on the phone once, maybe twice?

23 A. Yes.

24 Q. I am going to be very specific. That was almost 10 years  
25 ago --

1   **A.**   Yes.

2   **Q.**   -- that event?

3           Is it fair to say that, without any particular document in  
4 front of you, you could not say what the exact question or  
5 questions were, or the exact answer or answers were?

6   **A.**   That's correct.

7   **Q.**   And seeing in print, can you be sure that's exactly what  
8 was said, or does it -- is it more like that's kind of what  
9 was said?

10   **A.**   It looks accurate. I do remember looking at it after it  
11 happened and thinking that it was accurate.

12   **Q.**   You remember the words that are printed there, were all  
13 those words used or some of those words used or --

14   **A.**   I don't remember the exact words.

15   **Q.**   Right. That's really all I am getting at. You don't  
16 remember the exact words of either the question or questions  
17 or answer or answers?

18   **A.**   No.

19           MR. BLOOM: Given that, I would object to this matter  
20 coming in as an accurate reporting of actually what was said.

21           THE COURT: It is noted. You may question. It will  
22 be admitted for the purpose, and you may cross-examine on that  
23 point.

24           MR. BARTLETT: I would like to just have the  
25 overhead.

1 DIRECT EXAMINATION - CONTINUED

2 BY MR. BARTLETT:

3 Q. So after this meeting, Mr. Sullivan came over and asked  
4 you -- and you stated, if you could indicate --

5 MR. BLOOM: Excuse me, I am just going to object  
6 because there hasn't been any testimony that the person was  
7 Mr. Sullivan.

8 THE COURT: It is noted.

9 BY MR. BARTLETT:

10 Q. A reporter came over to talk to you?

11 A. Yes.

12 Q. What did you tell him?

13 A. Would you like me to read --

14 Q. Yes.

15 A. "The talk was sponsored by EARN, the Evergreen Animal  
16 Rights Network. We all pretty much know Craig and the  
17 liberation collective, said Tiffany Tudder, a junior."

18 Q. I am assuming that's you. There weren't two Tiffany  
19 Tudders at Evergreen?

20 A. I highly doubt it.

21 Q. Then there's an indication of a question from the  
22 reporter. Can you tell us what that question was?

23 A. "I asked the EARN members if they supported arsons and  
24 mink farm releases."

25 Q. And you heard that question?

1 A. Yes.

2 Q. And what did Ms. Waters respond on that day in November?

3 A. "As long as people don't get hurt, I totally support it,  
4 said Briana Waters, a senior."

5 Q. What was your response?

6 A. "And animals don't get hurt -- don't be species-ist, said  
7 Tiffany."

8 Q. And what does Ms. Waters say?

9 A. "And animals, said Briana."

10 MR. BARTLETT: I have no further questions, Your  
11 Honor.

12 CROSS-EXAMINATION

13 BY MR. BLOOM:

14 Q. Hello again. With regard to what Briana supposedly said  
15 and you supposedly said, the idea of arsons and mink releases,  
16 do you know what was in Briana's mind when she said, I support  
17 it?

18 A. No.

19 Q. Do you know what she meant by "it"?

20 A. No.

21 Q. Did she mean mink releases?

22 A. From what the question looks like, it looks like it, but I  
23 don't know what she was thinking exactly.

24 Q. And about Briana, did she ever express to you that she was  
25 a person who was in favor of burning down buildings?

- 1   **A.**   No.
- 2   **Q.**   Did she strike you as a person like that?
- 3   **A.**   No, she was very laid back, very calm.
- 4   **Q.**   Would you describe her as mellow?
- 5   **A.**   Yes.
- 6   **Q.**   Would you describe her as not extreme?
- 7   **A.**   Yes.
- 8   **Q.**   Would you describe her as violent?
- 9   **A.**   No.
- 10  **Q.**   Would you describe her as honest?
- 11  **A.**   Yes.
- 12  **Q.**   Would you describe her as rational?
- 13  **A.**   Yes.
- 14  **Q.**   Would you describe her as level headed?
- 15  **A.**   Yes.
- 16  **Q.**   Would you describe her as a nice person?
- 17  **A.**   Yes.
- 18  **Q.**   EARN, the Evergreen Animal Rights Network, one of the
- 19  things that your organization did was you brought speakers; is
- 20  that correct?
- 21  **A.**   Yes.
- 22  **Q.**   And Craig Rosebraugh was one of those people?
- 23  **A.**   Yes.
- 24  **Q.**   Did you also have bake sales?
- 25  **A.**   Yes.

1 Q. That's kind of what the organization was at the time and  
2 perhaps still is?

3 A. Yes.

4 Q. It's not a militant organization, you didn't burn down any  
5 buildings, did you?

6 A. No.

7 Q. You had potlucks sometimes?

8 A. Yes.

9 Q. Was the idea in part to raise awareness on the campus and  
10 beyond of environmental activities regarding animal rights --  
11 I am sorry, animal rights activities, I should say?

12 A. Yes.

13 Q. Just a couple other questions about the University. Was  
14 it a campus where it was pretty much open, people came and  
15 went on the campus, outside and within the buildings?

16 A. Yes.

17 Q. The buildings weren't kept locked for the most part?

18 A. No, I don't remember anything really being locked.

19 Q. If one were to have -- let me withdraw that for a moment.  
20 It's a rather large campus, right?

21 A. The area was large. The buildings weren't very large.

22 Q. If one wanted to have a clandestine secret meeting, there  
23 were plenty of secluded areas, woodsy areas; is that correct?

24 A. Yes.

25 Q. All over the place?



1   **A.**   Yes.

2   **Q.**   So to have a meeting, a clandestine meeting, in a room in  
3   a building would be a little risky that somebody might come?

4   **A.**   Yes.

5               MR. BLOOM:   I have no further questions.   Thank you.

6               MR. BARTLETT:   Nothing further, Your Honor.

7               THE COURT:   This witness can be excused?

8               MR. BLOOM:   Yes.

9               MR. FRIEDMAN:   The Government calls Toby Bradshaw.

10              THE COURT:   Let me have you come forward and be  
11   sworn.

12              TOBY BRADSHAW, called as a witness, duly sworn.

13                                      DIRECT EXAMINATION

14   BY MR. FRIEDMAN:

15   **Q.**   Good morning, Professor Bradshaw.

16   **A.**   Good morning.

17   **Q.**   Could you tell us your whole name and spell your last name  
18   for the Court Reporter.

19   **A.**   Sure.   My name is Toby Bradshaw, B-R-A-D-S-H-A-W.

20   **Q.**   Where were you born and raised?

21   **A.**   I was born in Havalot, North Carolina and my father was a  
22   Marine so we moved around a bit.   I've lived in North  
23   Carolina, Virginia, Tennessee, California, a lot of different  
24   places.

25   **Q.**   Where did you go to college?

1 **A.** North Carolina State for two years and East Carolina  
2 University where I graduated in 1979.

3 **Q.** In what did you get your degree?

4 **A.** In biology.

5 **Q.** After college, did you go on to graduate school?

6 **A.** Yes, I did. I went to graduate school in the Department  
7 of Biochemistry at the Louisiana State University Medical  
8 Center in New Orleans.

9 **Q.** You said Medical Center. Were you studying medicine?

10 **A.** No. A lot of times your basic science departments that  
11 support medical education are in medical school, so it was a  
12 biochemistry department, a basic research department, but our  
13 teaching responsibilities were for medical students.

14 **Q.** After getting your Ph.D. in biochemistry, what did you do?

15 **A.** I came to the University of Washington in 1984 as a  
16 postdoctoral fellow in the Department of Biochemistry, working  
17 with Milt Gordon.

18 **Q.** At some point, did you switch departments?

19 **A.** Yes. I moved around inside the University a bit. I had  
20 a -- after my postdoctoral position in biochemistry, I had a  
21 faculty appointment, a research assistant professor  
22 appointment, and then I moved my appointment to the College of  
23 Forest Resources where I became a research assistant professor  
24 in that department and was promoted to research associate  
25 professor, and that's the position I held in the College of

1 Forest Resources in 2001.

2 **Q.** Can you tell us, what is the College of Forest Resources?

3 **A.** The College of Forest Resources is -- was at the time  
4 divided into two departments, and the two departments focused  
5 on different aspects of forest biology.

6 The department I was in focused on sort of the biological  
7 aspects of forestry, ecology, genetics, physiology, things  
8 like that. The other half of the department worked on pulp  
9 and paper science, more chemical engineering kind of a group.  
10 There's also economists and social scientists. The college  
11 encompasses a wide variety of disciplines of which biology is  
12 just a part.

13 **Q.** This is part of the University of Washington?

14 **A.** Yes. So it's one of the 17 or so colleges at the  
15 University.

16 **Q.** In 2001, what were you doing at the College of Forest  
17 Resources?

18 **A.** As a research associate professor, the major focus of my  
19 daily activities is research. Research faculty are supported  
20 by external funds, by grants from outside organizations, so  
21 they are not drawing a state salary. But also as part of my  
22 mission, besides research, it included some teaching, so I had  
23 graduate students who were participating in the research, and  
24 then I did teach undergraduate courses for the biology program  
25 because I liked to teach, and I like to teach undergraduates.

1 So I did some undergraduate teaching even though it wasn't  
2 really part of my official responsibilities.

3 Q. What course or courses did you teach for undergraduates?

4 A. Introductory biology, Biology 101.

5 Q. Now, in 2001, did you have an office and laboratory at the  
6 University?

7 A. Yes. My office and lab were at the Center for Urban  
8 Horticulture.

9 Q. Let me ask you to look at Exhibit 306. It's already been  
10 admitted so it should appear on your screen.

11 A. Okay.

12 Q. Do you recognize that?

13 A. Yes, I do. It's the floor plan for the first floor of  
14 Merrill Hall, where my office was.

15 Q. The first floor is the ground floor?

16 A. The ground floor, yes.

17 Q. Can you point out for us where your office was.

18 A. Sure. Right there. (Indicating.)

19 Q. Across the hall, I guess, there's a space labeled  
20 "Laboratory"?

21 A. Yes. So the space across the hall was my lab, and then I  
22 also had experimental plants in the greenhouse as well which  
23 isn't shown on this floor plan. So my lab space is where I  
24 carried out the genetic research, the wet lab part of it, and  
25 then I used greenhouse space as well to do my cross-breeding

1 and what not.

2 **Q.** Was the greenhouse near this building?

3 **A.** Yeah, I would say about 75 meters away, something like  
4 that.

5 **Q.** Would you describe being a professor and working there,  
6 was it a 9:00 to 5:00 job for you?

7 **A.** Oh, definitely not. So research is one of those  
8 professions that requires large investments of time at some  
9 periods and then huge investments of time at other periods.  
10 So it's a very busy activity.

11 Of course, since I was doing a lot of tree breeding, it's  
12 seasonal work. So in the breeding season, things would be  
13 very, very busy and we'd spend a lot of time in the lab, and  
14 the graduate students are there at all hours trying to get  
15 their thesis work done.

16 **Q.** Now, I think you touched on this briefly, but what were  
17 you doing? What was your research focused on in 2001?

18 **A.** In general, my area of research is evolutionary genetics  
19 so I am interested in how organisms adapt to their  
20 environment, the genetic basis by which they do this. So this  
21 is a question that's still open in evolutionary biology.

22 Darwin addressed many of the major issues of evolution,  
23 but he didn't know anything about genetics so we are at a  
24 place now where we can try to understand gene by gene how  
25 organisms adapt to their environment. So I worked on a

1 variety of organisms. I worked on trees, I've worked on  
2 monkey flowers -- I still work on monkey flowers. So my  
3 day-to-day research involves things like making crosses  
4 between different plants, so cross-pollination. I'm  
5 extracting DNA from those plants and then mapping the genes  
6 that differ between two differently-adapted organisms.

7 So you could think of it as a classical genetics sort of  
8 brought into the 21st century using modern methods that were  
9 adapted for the human genome project, for example.

10 **Q.** Let me get you to walk us through what you would do on a  
11 research project in general terms. You talked about crossing  
12 a moment ago. What do you mean by that?

13 **A.** Sure. So the two -- I will just refer to the work I have  
14 done on trees since that's sort of what's at issue here. The  
15 work would usually start with crossing two different species  
16 of trees. So the two species I work most with are the black  
17 cottonwood, which is native to Western Washington. Everybody  
18 here has seen them growing along I-5, for example.

19 Then there's the eastern cottonwood, which is found in  
20 Eastern Washington and all the way through the Midwest and  
21 Eastern North America. So these species are adapted to two  
22 really different environments.

23 One, the black cottonwood is adapted to cool, maritime  
24 coastal climate, and the eastern cottonwood is adapted to this  
25 drier, more arid, interior climate. So we would make crosses

1 between those by collecting male and female branches -- these  
2 are trees that have sexes on separate trees -- so we collect  
3 male and female branches, force pollen from the male branches  
4 and then dust the pollen on the female branches to produce the  
5 seeds.

6 All this can be done in the greenhouse, we don't have to  
7 do it on the tree, thank goodness. You can collect the  
8 branches and root the branches in the greenhouse and make your  
9 process right there. We plant the seeds out, and then we  
10 would do tests of adaptations. We would essentially plant  
11 these seedlings in different environments, both west and east  
12 of the mountains, and measure their performance.

13 And then we are able to analyze gene by gene which genes  
14 that differ between these two species are important for  
15 adaptations to their local environment. So it's sort of a  
16 classic approach to understanding the genetics of adaptation.

17 These kinds of hybrids, by the way, don't just occur in  
18 the lab. If you go down, for example, if you are crossing the  
19 Umatilla Bridge into Oregon, you will see there's a big stand  
20 of natural hybrids between these two species because where  
21 their ranges overlap, they hybridize.

22 **Q.** Are you familiar with what's called genetic engineering?

23 **A.** Very familiar.

24 **Q.** Would you tell us what you understand that to mean.

25 **A.** So I won't tell you what I understand it to mean, I will

1 tell you what it is because this is -- this area of genetics  
2 is my area of expertise.

3 Genetic engineering is introducing a gene from one  
4 organism into another by means other than a sexual process.  
5 So cross-pollination is a sexual process. We have male sperm  
6 from the male, an egg cell from the female. They merge and  
7 the genes from the male and the genes of the female are  
8 combined into one zygote that grows into the organism of the  
9 next generation.

10 In genetic engineering, you take a specific gene of  
11 interest and insert it into the organism's genome that you are  
12 targeting, and that gene, that extra gene, is incorporated  
13 into the chromosomes of the organism and then it is passed  
14 onto its offspring.

15 But it's an asexual process. There's a variety of ways to  
16 get the DNA into the nucleus of the cell. You can shoot it in  
17 literally with a gun. You can put DNA on little gold  
18 particles and shoot the gold particles into the nucleus of a  
19 cell.

20 Most commonly, though, it's done by using a bacterium that  
21 naturally, as part of its life cycle, introduces DNA into  
22 plant cells, and we can engineer the bacterium, the bacterium  
23 then engineers the plant cells. So genetic engineering  
24 involves manipulating one gene at a time in an asexual  
25 process.



1 Q. Were you conducting research to do that?

2 A. I don't do genetic engineering of trees. I had never done  
3 any genetic engineering. It's not a technique that I think is  
4 objectionable. It's used every day in basic research labs  
5 around the world.

6 If you want to understand how a gene functions, a single  
7 gene, the best way to find out is to put it into an organism  
8 and see what it does. But I wasn't doing any genetic  
9 engineering. My work involved sort of standard cross-breeding  
10 of trees.

11 Q. Was there anything different in what you were doing than  
12 what farmers have done for hundreds or thousands of years?

13 A. Yeah, more like tens of thousands. No, it's not at all  
14 different. As I explained it, it's not even different from  
15 what happens in nature when we see these hybrids form  
16 naturally everywhere the range of the two species overlap.

17 In fact, you can look into the fossil records, and there's  
18 30 million years of evidence that these two species have been  
19 hybridizing for as long as they both have been around.

20 Q. Professor Bradshaw, you said that in 2001 you were a  
21 research associate professor. Where did the money to pay your  
22 salary come from?

23 A. So research faculty are supported by their grants, and my  
24 grants came from the National Science Foundation, the  
25 Department of Energy. I had grants from various pulp and

1 paper companies, forest product companies that supported my  
2 research.

3 **Q.** Did the University pay you any salary?

4 **A.** No.

5 **Q.** What about -- you had a laboratory. Did you have people  
6 working for you?

7 **A.** Yes, graduate students and technicians.

8 **Q.** Where did their money come from?

9 **A.** Their salary also comes from grants. So there's no state  
10 salary support for the operation of research faculty.

11 Research faculty appointments are really common at the  
12 University of Washington. There are probably 1500 research  
13 faculty in the medical school, for example, and their work is  
14 supported entirely by extramural grant funding. So it's a  
15 normal kind of appointment at the UW, but it does require  
16 external support. There's no state support for it.

17 **Q.** The grants you are talking about, do you yourself enter  
18 into a contract with whoever is the granting agency?

19 **A.** No, the University is the organization that actually  
20 receives the grant. So I would write the application, it  
21 would be put through the Office of Sponsored Projects at the  
22 University of Washington, and then the funds themselves would  
23 come back to the grant and contract accounting at UW and then  
24 be disbursed to me as needed.

25 **Q.** Do you get all the money that comes into the grant?

1 **A.** That would be wonderful if it were true but no, the  
2 University has indirect costs that they recover on every  
3 grant.

4       So every grant that's submitted, if it's funded, the  
5 University takes some percentage of that. If it's on-campus  
6 research, that percentage is about 53 percent. They take 53  
7 percent of the received funds and use it to support research  
8 activities around the campus. So not just my research  
9 activities, even though I wrote the grant. They are used to  
10 pay for the library, to pay the electrical bills, to pay  
11 people to clean the labs, to pay for compliance with  
12 accounting practices, all the things that are necessary to  
13 administer the billion dollars of federal research support  
14 that comes to the UW every year.

15 **Q.** I would like to take a minute to ask you some questions  
16 about some of the specific entities that were funding you in  
17 2001.

18       Who was funding your research in 2001?

19 **A.** So I had a few sources of funding, the National Science  
20 Foundation, which did fund then and still continues to fund my  
21 work on the adaptation of these monkey flowers which I haven't  
22 talked about; it's similar but smaller organisms to the trees  
23 that I worked on.

24       The U.S. Department of Energy funded my work on the  
25 adaptation of trees to their environment because the

1 Department of Energy then, just as they are now, are  
2 interested in high biomass, or plants to be used for  
3 conversion to biofuels for sort of reducing carbon footprint  
4 of fuel consumption in the U.S.

5 Then forest product companies were supporting my work,  
6 companies like Alberta Pacific, Forest Industries and Westvaco  
7 in 2001.

8 **Q.** Was there some formal organization that does that?

9 **A.** Yeah, I had formed a research cooperative called the  
10 Poplar Molecular Genetics Cooperative, and these cooperatives  
11 are sort of a common mechanism in the forest product industry  
12 to support basic research, the kind of research that I was  
13 doing.

14 So the kind of research I do doesn't have usually direct  
15 application to the forest products industry. So the industry  
16 supports university-based cooperatives to do cutting edge  
17 basic research that maybe the company would be able to put to  
18 use 10 or 20 years down the road.

19 These involve, on the forest products industry scale,  
20 pretty modest sums of money. So this research cooperative is  
21 the mechanism by which the different forest product companies  
22 could aggregate their money with the funds from the Department  
23 of Energy to support this basic work on tree genetics.

24 **Q.** That was called the Poplar Genetic Cooperative?

25 **A.** Yes.

1 Q. Do you recall who were the members of that cooperative,  
2 the Department of Energy?

3 A. Oh, yeah. So the Department of Energy -- I know I won't  
4 be able to remember them all here -- the Department of Energy,  
5 Alberta Pacific. At times, maybe not in 2001, but in other  
6 years, Boise Cascade, Champion, International Paper, Westvaco,  
7 Weyerhaeuser, James River Corporation, Potlatch, a lot of  
8 forest product companies.

9 Q. Are those companies based just in Washington or do they  
10 operate --

11 A. Oh no. Alberta Pacific is based in Boil, Alberta, for  
12 example, and Westvaco's research facility is in Sommerville,  
13 South Carolina. They are spread all over the country and all  
14 over the nation.

15 In fact, I had money from New Oji Paper Company in Japan.  
16 They were members for a while. And the University of Talca in  
17 Chile. So it was an International cooperative and lots of  
18 states within the United States supporting it as well.

19 Q. In return for funding your research, what benefits did  
20 these companies get?

21 A. So in the agreement, the cooperative agreement, it's clear  
22 that the major benefit that they get is intellectual in  
23 nature. In other words, we provide them with a first look at  
24 the fruits of the research that we are doing on how organisms  
25 adapt to their environment.

1        So you might think that that doesn't seem like a very  
2 tangible reward. It's maybe something that they can't keep  
3 exclusive because the nature of academic research is, even  
4 though these are private companies that are funding this work,  
5 they don't have privileged access to the information.

6        They hear about it before it comes out in publication  
7 form, but all of this work is going to be published in the  
8 public domain eventually. So it's not any kind of private or  
9 secret sort of research, but they do hear about it before it's  
10 written up for publication. So they get some access to the  
11 information ahead of time, which is useful to them.

12        Then of all the trees I bred, which I think was around  
13 15,000 trees, I would provide the companies -- if they  
14 requested them, I would provide them with cuttings of that  
15 material or extra seeds, so that they could propagate them and  
16 use them in their own tests if they were interested in  
17 propagating them commercially, but that's not something I was  
18 involved in.

19        So they had access to information and what's, in the plant  
20 breeding world, called germ plasm, seeds and cuttings of  
21 potentially commercially useful things, but commercial  
22 evaluation isn't something I was involved in at all.

23 **Q.** Did the companies ask you for seeds, though?

24 **A.** Oh, yes. Oh, yes. So all the companies that propagated  
25 these trees for commercial use asked for material from me that

1 they could test on their own, yeah.

2 Q. Have you seen a list of the grants that you had?

3 A. Yes.

4 Q. Is that a document that's maintained and produced by the  
5 University of Washington in the normal course of business?

6 A. Yes.

7 MR. FRIEDMAN: May the witness be shown Exhibit 352.

8 I am sorry, you will have to look at a folder in front of you.

9 A. Okay. I have got it.

10 BY MR. FRIEDMAN:

11 Q. Is that the spreadsheet you had looked at previously?

12 A. Yes.

13 MR. FRIEDMAN: Government offers 352.

14 MR. BLOOM: No objection.

15 THE COURT: Admitted.

16 (Exhibit No. 352 admitted.)

17 BY MR. FRIEDMAN:

18 Q. Can you tell us in general what this is, Professor  
19 Bradshaw?

20 A. It's just a list of sources of grant support for my  
21 research starting back in the mid-1990s through 2002, 2004, it  
22 looks like.

23 Q. It's basically all the grants that you've had over time?

24 A. Yes.

25 Q. When was the Poplar Molecular Genetics Cooperative formed?

1   **A.**   In 1995.

2   **Q.**   For how long did the companies sign up initially?

3   **A.**   For five years.

4   **Q.**   What happened after that five-year period?

5   **A.**   After five years, there was a renewal agreement and some  
6 companies renewed their affiliation. This was a time -- I  
7 don't know how many of you know much about the forest product  
8 industry, but there was a time of great consolidation within  
9 the forest products industry about the time the cooperative  
10 was being renewed, and some people rejoined for another  
11 five-year hitch and some didn't.

12   **Q.**   If you look at the sixth line of this spreadsheet, if you  
13 touch your screen, you should be able to create a dot or red  
14 arrow by it.

15       Do you see a line for Alberta-Pacific?

16   **A.**   Yes.

17   **Q.**   It's probably one line below that. Can you see the start  
18 date and end date for the grant?

19   **A.**   Yep. I can't tell where the tip of the arrow is going to  
20 end up. Can I move it?

21   **Q.**   Can you tell us what that shows?

22   **A.**   Sure. It just shows that Alberta-Pacific forest  
23 industries had renewed its membership for the year ending in  
24 February of 2002 and paid its annual dues of \$12,500 U.S.

25   **Q.**   Was that funding that was in place at the time of the fire



1 in this case?

2 **A.** Yes, it had been continuously there since 1995.

3 **Q.** We are going to turn to the third page of that exhibit.

4 **A.** Okay.

5 **Q.** If you erase that red dot, there should be a number of  
6 lines for Westvaco. Can you highlight the bottom line?

7 **A.** For Westvaco?

8 **Q.** Was Westvaco another member of this cooperative?

9 **A.** Yes.

10 **Q.** What does that bottom line show?

11 **A.** Just that they had also renewed their membership through  
12 the end of February 2002 and paid their annual dues of  
13 \$12,500.

14 **Q.** If you go up a little bit, there is four lines that say  
15 UT-Batelle?

16 **A.** Yes.

17 **Q.** The first line seems to cover the period that we are  
18 talking about.

19 What is UT-Batelle? Why are they there?

20 **A.** UT Batelle is the subcontract for the U.S. Department of  
21 Energy responsible for the disbursement of funds through their  
22 biofuels program. So Batelle essentially is just the  
23 accounting agent for the Department of Energy. So those are  
24 Department of Energy funds that you are looking at when it  
25 says UT-Batelle.

1           MR. BLOOM: Excuse me, I am not objecting, I just  
2 want the record to reflect that we regard this all as hearsay.  
3 We are not objecting.

4 BY MR. FRIEDMAN:

5 Q. How much Department of Energy funding did you have  
6 covering this period?

7 A. Oh, gosh. The Department of Energy paid essentially four  
8 dues equivalents, so \$50,000 a year.

9 Q. In addition to funding from the Department of Energy and  
10 the members of this cooperative, were you receiving other  
11 federal funding for your research?

12 A. Yeah, I had a grant from the National Science Foundation  
13 to work on my monkey flower project.

14 Q. What were you doing relating to monkey flowers?

15 A. So there, the issue is how organisms adapt to different  
16 pollinators. I worked on two different species of monkey  
17 flower, one is pollinated by bumble bees and one is pollinated  
18 by hummingbirds.

19       They have very, very different flower shapes and colors,  
20 and I was doing the genetic basis of the differences between  
21 those two species that allow pollinators to recognize those  
22 kinds of flowers.

23 Q. Is this again cross-breeding?

24 A. Yes, same kind of thing.

25 Q. If you take a look at the second page, this should show up

1 on the second page -- the second page of that exhibit?

2 Can I get you to erase the red lines. The National  
3 Science Foundation grant.

4 **A.** The National Science Foundation, here.

5 **Q.** How much money were you receiving from the National  
6 Science Foundation?

7 **A.** \$408,000.

8 **Q.** Did it cover a several-year period?

9 **A.** It was a four-year proposal.

10 **Q.** Now, in 1999, did something happen where some of your  
11 research was attacked?

12 **A.** Yeah. In 1999, at the time when the World Trade  
13 Organization meetings were in Seattle, I had a few -- maybe  
14 two or three dozen of my hybrid cottonwood plants growing in  
15 the fenced-in area behind my lab at the Center for Urban  
16 Horticulture, and those were cut down, which is --

17 **Q.** Was there other damage done to plants in --

18 **A.** Yes. One of my colleagues, Al Wagar, had a couple of  
19 hundred Red Alders, and those were cut down. He was using  
20 those for wetland restoration projects.

21 **Q.** Did you subsequently receive a communiqué or an  
22 announcement about what had happened?

23 **A.** Yeah, I did. I saw it on the web. I didn't receive it by  
24 e-mail directly, but yeah, I was notified that it existed.

25 **Q.** Would you take a look at 301 and tell me if you recognize

1 that.

2 **A.** Sure. Yes, this is the communiqué that was put out after  
3 the WTO meetings in 1999.

4 **MR. FRIEDMAN:** The Government offers 301.

5 **MR. BLOOM:** We have no objection.

6 **THE COURT:** Admitted.

7 (Exhibit 301 admitted.)

8 **BY MR. FRIEDMAN:**

9 **Q.** Now, you said you had Cottonwoods that were destroyed?

10 **A.** Right. So I guess I should clarify, the cottonwoods,  
11 poplars and Aspens are all trees in the genus populus and so  
12 the terms sort of get used interchangeably, but yeah,  
13 cottonwood, Aspen and poplar, all the same.

14 **Q.** Were those genetically engineered?

15 **A.** No.

16 **Q.** What were you using them for?

17 **A.** They were just part of my breeding program at the time.

18 **Q.** You talked about some trees belonging to Al Wagar. Were  
19 those genetically-engineered trees?

20 **A.** No, nobody's ever genetically engineered an alder.

21 **Q.** For what was he growing them?

22 **A.** For the wetland restoration work that he does.

23 **Q.** Did that have an effect on his work?

24 **A.** Sure. But for those of you who aren't familiar with  
25 cottonwoods or poplars, never cut one down in your yard and

1 had it resprout from the stump, when you cut down a poplar or  
2 a cottonwood or aspen, they just resprout.

3       So for me, cutting down a few of my trees, it was no big  
4 deal. I cut them down every Winter myself anyway. But these  
5 red alder that Al was propagating, when they are cut down,  
6 they don't resprout, so they essentially destroyed his  
7 propagils that he was going to be using for his restoration  
8 work.

9 **Q.** Where was he restoring wetlands?

10 **A.** I really don't know.

11 **Q.** Had you reviewed the communiqué you saw after this action?

12 **A.** Yes.

13 **Q.** There's a reference in the second paragraph to  
14 genetically-modified cottonwoods and poplars that were  
15 destroyed at WSU? Can you tell us about that.

16 **A.** This is one of my favorite stories. Sure. So at the same  
17 time, the WSU Research and Extension Facility in Puyallup --  
18 it's an extension facility where work specific to Western  
19 Washington plants is done, even though it's a WSU  
20 installation, and the group that claimed that they went in and  
21 destroyed all of the genetically-engineered poplars at WSU had  
22 actually broken into a greenhouse and dumped out a few hundred  
23 pots of raspberry plants that the raspberry breeder there was  
24 using to breed against disease resistance. So they claimed  
25 they were genetically-engineered poplars, but they couldn't

1 tell them from raspberries. If it hadn't happened to me, it  
2 would have been a little funnier, but it's still fairly funny.

3 Q. And then the fourth paragraph is the one that really  
4 refers to your work. I would ask you to read that to the  
5 jury.

6 A. Read the whole thing?

7 Q. Just the fourth paragraph.

8 A. The whole fourth paragraph? Sure.

9 "At the University of Washington, Professor Toby Bradshaw  
10 conducts research on poplars, genetically engineering them to  
11 be resistant to leaf rust, a fungus that threatens the profit  
12 margins of timber companies that grow poplars. Founder of the  
13 Poplar Molecular Genetics Cooperative, Bradshaw receives funds  
14 from such timber giants as Alberta Pacific Forest Industries,  
15 Scott Paper Ltd., Boise Cascade, Union Camp, Champion  
16 International, Westvaco, Fort James, Weyerhaeuser, Inland  
17 Empire Paper Company, U.S. Department of Energy Biofuels  
18 Feedstock Development Program, Pacifica Papers Limited and  
19 Potlatch Corporation. His lab exists to serve industry and to  
20 engineer the poplar (and other trees in the Populus family)  
21 to have stronger industrial characteristics and be more  
22 profitable. In addition to this lab's activities, UW is  
23 genetically engineering poplars for phytoremediation. In  
24 other words, to clean up toxic waste generated by  
25 corporations. In light of this, the Washington Tree

1 Improvement Association visited Bradshaw's facilities at the  
2 UW College of Urban Horticulture."

3 Q. After this, were you concerned that your research might be  
4 the subject of future attacks?

5 A. It crossed my mind, but to be honest, I am just not the  
6 kind of person that worries about things like this. They are  
7 beyond my control. We work at a public university where  
8 there's free access by everyone. I wouldn't change that about  
9 the University. So I didn't spend any real time worrying  
10 about it, even though it crossed my mind.

11 Q. Did you ever look on the Internet after this?

12 A. Yes.

13 Q. Where did you look and why?

14 A. So I would browse around to -- I would Google, for  
15 example, tree genetic engineering to look for groups that  
16 specifically were targeting me, you know, where my name and my  
17 affiliation and my location would be posted with some sort of  
18 invective about genetic engineering.

19 Q. When did you first -- let me turn your attention --

20 THE COURT: Mr. Friedman, let me ask you this. How  
21 much longer do you have on your direct?

22 MR. FRIEDMAN: Five to 10 minutes, Your Honor, but it  
23 would be fine to take a break.

24 THE COURT: Let's take a break, the morning recess at  
25 this time. All right. Of course, don't discuss the case.

1 Leave your books on the chair, and I will have you back in  
2 here about 15 minutes.

3 (Jury not present.)

4 THE COURT: All right. You may be seated. We will  
5 take the morning recess.

6 THE CLERK: All rise. Court is at recess.

7 (Morning recess.)

8 MR. BARTLETT: Your Honor, Mr. Friedman pointed out  
9 to me that I forgot an administrative matter this morning. I  
10 believe I laid the foundation for admitting 740-E which is a  
11 section of the New York Times article, but I actually failed  
12 to move its admittance.

13 THE COURT: I don't think there was an objection, but  
14 I had ruled on it. But it hadn't been offered, I believe.

15 MR. BLOOM: I think I did object, and I think you did  
16 rule. We still object.

17 THE COURT: I understand it, but I will admit it.

18 MR. BARTLETT: In talking to Mr. Fox, and I wanted to  
19 give him a heads up, there is a front line that arguably is  
20 not admissible. "The talk was sponsored by EARN, the Animal  
21 Rights Network." Technically, that is not part of her  
22 conversation and --

23 MR. BLOOM: I was the person that talked about that.

24 MR. BARTLETT: I am sorry.

25 THE COURT: Are we clear now on the exhibit?



1 MR. BARTLETT: We are, Your Honor.

2 THE CLERK: It was page 5. I will have it redacted.

3 THE COURT: All right. Bring in the jury.

4 (Jury present.)

5 THE COURT: All right. You may be seated.

6 Continue.

7 MR. FRIEDMAN: Thank you, Your Honor.

8 BY MR. FRIEDMAN:

9 Q. Professor Bradshaw, how did you first learn of the fire at  
10 the Center for Urban Horticulture?

11 A. I got a call about 6:20 or 6:30 in the morning from my  
12 colleague Sarah Reichard.

13 Q. What did you learn during that call?

14 A. Sarah just told me that Merrill Hall was on fire and, of  
15 course, I hopped in my truck and drove into the UW.

16 Q. Did you have any thoughts when you first heard it was on  
17 fire about what might have happened?

18 A. Yes. I mean, it certainly occurred to me that I might  
19 have been the target of a fire bombing. My colleague Steve  
20 Strauss had trees that he was working on at Oregon State  
21 University that had been damaged. I had my own tree work  
22 damaged in 1999, so yeah, it crossed my mind.

23 Q. Defense counsel has asked that you lean a little closer to  
24 the microphone so we get more volume.

25 A. Sure.

1 Q. What time was it that you arrived at the Center?

2 A. Around 7:00 or not long thereafter.

3 Q. Was the building still on fire?

4 A. There were still some hot spots and firefighters on the  
5 roof trying to put out the last of the fire.

6 Q. What did you do when you arrived at the scene?

7 A. I walked around the building -- it was cordoned off --  
8 just to see what might be going on. Of course, I met with  
9 Sarah and Tom and other of my colleagues who were at the  
10 scene.

11 Q. Would you take a look at Exhibit 325-A which should show  
12 up on your screen. It's already been admitted.

13 Do you see anything there that you saw there that morning?

14 A. Yeah. This was one of the things that caught my eye right  
15 away. These are two plastic Tupperware boxes, and they were  
16 in my office the night before. These are boxes that I kept  
17 snakes in. I have some color mutants of corn snakes that I  
18 used to teach basic genetics.

19 Most students get taught genetics on fruit flies or  
20 something fairly boring, but I think snakes are more  
21 interesting. So I kept these snakes for teaching genetics,  
22 and I had used them back in November to teach my class, but  
23 then I brought the snakes home.

24 The boxes that the snakes lived in were empty, they didn't  
25 have any snakes in them, but they were still in my office in

1 May. So these had been removed from my office and put  
2 outside.

3 Q. Did you have any concern based on the fact that they were  
4 outside the office?

5 A. Well, it's obviously unusual to have them put outside. I  
6 knew that the Earth Liberation Front in its other actions had  
7 purported to try to spare animal life, although the bomb  
8 swallows that were nesting in the building I am sure got fried  
9 by the fire.

10 Q. Would you take a look at Exhibit 320 which is also already  
11 in evidence.

12 A. Yes, this is my office.

13 Q. I skipped over one exhibit. Could we look at 316 first.

14 A. Yes, this is the outside of Merrill Hall. My office is  
15 here, my office window. (Indicating.) So it was no mystery  
16 to anybody there that morning where the fire had started.

17 Q. Then turning to Exhibit 320.

18 A. This is the inside of my office. This is my server, file  
19 server that contained all the experimental data for my lab.  
20 Here's one of my desks. My book shelves were here. So no  
21 more books.

22 Q. Can you describe for us the -- was there damage also to  
23 your laboratory?

24 A. No, not directly from the fire, but there was extensive  
25 smoke and water damage to the lab, yes.

1 Q. As a result of the fire, what did you lose?

2 A. The things that I lost that I miss the most are probably  
3 things that don't mean much to anybody other than an academic  
4 scientist. I lost my books and papers that I'd collected over  
5 the past 20 years. Some of these books are out of print  
6 books.

7 One of them, the one I miss the most, was signed by the  
8 author, and the author has since died. It was his last copy  
9 of this seminal work on plant breeding by Bob Allard. So they  
10 are things that mean a lot to academics. I mean, it's your  
11 whole intellectual career essentially that was destroyed.

12 Q. What about slides? Is that something that's used in your  
13 --

14 A. Of course. I had images from my research in the form of  
15 slides, collected over the past 20 years of work in the lab  
16 and in the field. Those were all destroyed. Lecture notes,  
17 photographs, artwork, the kinds of things that anybody would  
18 have, personal things that anybody would have in their office,  
19 in addition to the academic papers.

20 Q. Are things like the slides -- can you replace those?

21 A. Oh, no, those were all one-of-a-kind, irreplaceable sorts  
22 of things, yes.

23 Q. What about the equipment in your laboratory and perhaps  
24 office?

25 A. Well, all the -- as you can see from my office, there was

1 nothing left, so all the pieces of equipment in my office were  
2 completely destroyed, all of the lab equipment in my lab,  
3 centrifuges and gel electrophoresis apparatus, all that was  
4 destroyed by the smoke and water damage, the refrigerators,  
5 freezers, everything.

6 **Q.** What impact did that have on your research?

7 **A.** Fortunately, the University of Washington really came  
8 through in great style after the fire bombing and bought new  
9 equipment for me. I was housed in a new lab, the same lab I  
10 am in today, within a matter of a few weeks. So the effect on  
11 my research wasn't as severe as it was for the other people in  
12 my building.

13 My research operation, by the time we got everything  
14 cleaned up and organized and the computers back up and  
15 running, lab equipment purchased and back up and running was  
16 probably about a six-week time period when my research was  
17 shut down. But I was up and going again in about six weeks  
18 after the fire bombing.

19 **Q.** As a researcher and one supported by grants, how important  
20 are delays in research to you?

21 **A.** Well, for someone who is research faculty, whose  
22 livelihood depends on making sustained progress on the work  
23 that you've been funded to do by the granting agencies, a  
24 six-week time delay is potentially a very serious thing for my  
25 career. I mean, I was very concerned for my grad students.

1 They were able to get funding, again from the University, to  
2 carry them through this period when they couldn't get any  
3 research done.

4 So, it was a potential threat to my career. I have to say  
5 that wasn't the foremost thing in my mind at the time, though.

6 MR. FRIEDMAN: Thank you very much, Professor  
7 Bradshaw.

8 CROSS-EXAMINATION

9 BY MR. BLOOM:

10 Q. Good morning. My name is Robert Bloom. I am one of the  
11 two attorneys for Briana Waters who's on trial here. We've  
12 never spoken or communicated until just now; is that correct?

13 A. That's correct.

14 Q. Now, it goes without saying that this event was beyond  
15 horrible for you and your colleagues, and many people beyond  
16 that; is that correct?

17 A. Yes.

18 Q. Your research has suffered, people have suffered  
19 personally, including you, despite your being very amiable and  
20 powerful, obviously you suffered a good deal?

21 A. Yes.

22 Q. Now, do you know the name Lacey Philabaum?

23 A. Yes.

24 Q. Do you know the name Jennifer Kolar?

25 A. Yes.

1 Q. You know that those two have admitted to planning and  
2 burning down the Center for Urban Horticulture?

3 A. Yes.

4 Q. You know that this trial is about whether the Government  
5 has reliable, credible evidence that Briana Waters was  
6 involved in it?

7 A. Yes.

8 Q. You understand that she has pleaded not guilty?

9 A. Yes.

10 Q. She's denied her guilt?

11 MR. FRIEDMAN: Objection, Your Honor, argumentative.

12 BY MR. BLOOM:

13 Q. And that she has demanded a trial?

14 THE COURT: Mr. Bloom, what is this line of  
15 questioning -- that's why we are here. What is this line of  
16 questioning leading to?

17 MR. BLOOM: I just want to ask him if he was aware of  
18 that for the next question.

19 THE COURT: Next question.

20 BY MR. BLOOM:

21 Q. That question is, are you aware that we are all here  
22 because she has demanded a trial having pleaded not guilty and  
23 denied her guilt?

24 THE COURT: Let him answer.

25 A. Yes.

1 BY MR. BLOOM:

2 Q. Now, with regard to Lacey Philabaum and Jennifer Kolar,  
3 given the results of what happened to your work and the work  
4 of many others, do you have some question in your mind about  
5 the morality and the self-interest of those two people, Lacey  
6 Philabaum and Jennifer Kolar?

7 MR. FRIEDMAN: Objection, Your Honor.

8 THE COURT: Sustained. He'd have no knowledge of  
9 that.

10 BY MR. BLOOM:

11 Q. Based upon the results of their work, do you have any  
12 doubts about their morality and their self-interest?

13 MR. FRIEDMAN: Objection, Your Honor, it's the  
14 same --

15 THE COURT: Sustained. Next question.

16 MR. BLOOM: I have no other questions.

17 Thank you.

18 MR. FRIEDMAN: No further questions.

19 THE COURT: This witness can be excused?

20 MR. BLOOM: As far as I am concerned.

21 THE COURT: Mr. Friedman?

22 MR. FRIEDMAN: Yes, he may.

23 THE COURT: Is this witness to be excused?

24 MR. FRIEDMAN: Yes, he may.

25 The Government calls Professor Tom Hinkley.



1 THE COURT: Come forward and raise your right hand to  
2 be sworn.

3 THOMAS HINCKLEY, called as a witness, duly sworn.

4 THE COURT: Step around and take the witness chair.

5 DIRECT EXAMINATION

6 BY MR. FRIEDMAN:

7 Q. Good morning, Professor Hinckley. Can you tell us your  
8 whole name and spell your last name for the Court Reporter.

9 A. Thomas Metcalf Hinckley, H-I-N-C-K-L-E-Y.

10 Q. Where were you born and raised?

11 A. Born in Washington, D.C. and raised in Pennsylvania.

12 Q. Where did you go to college?

13 A. A small college in Minnesota.

14 Q. What did you study in college?

15 A. I was a biology major.

16 Q. After college, what did you do?

17 A. I went to -- immediately to graduate school at the  
18 University of Washington.

19 Q. When did you come to the University of Washington?

20 A. That was the Fall of 1966, and I graduated in June of  
21 1971.

22 Q. From the University of Washington?

23 A. From the University of Washington, yes.

24 Q. What did you come here to study?

25 A. The tree physiology and ecology. I studied at the College

1 of Forest Resources.

2 **Q.** When you say tree physiology and ecology, can you tell us  
3 what that is?

4 **A.** Interested in how trees function in the environment,  
5 particularly interested in how they function -- because trees  
6 can't move -- how they function from going from day to night,  
7 going from warm Summers to cold Winters.

8 **Q.** Once you had gotten your Ph.D. here, what did you do?

9 **A.** I went to -- after finishing my Ph.D. I went to the  
10 University of Missouri for almost nine years where I worked on  
11 the faculty at the School of Forestry and Fisheries and  
12 Wildlife.

13 **Q.** After that, what did you do?

14 **A.** Came back to the University of Washington as a faculty  
15 member in early January 1980 and have been on the faculty of  
16 the University of Washington since that time.

17 **Q.** Roughly the last 27 years?

18 **A.** Yes.

19 **Q.** Did you come back to a particular school at the University  
20 of Washington?

21 **A.** I returned to the College of Forest Resources where I'd  
22 done my graduate work some nine years earlier.

23 **Q.** Over the next 20 years roughly, from then to 2001, what  
24 did your research focus on?

25 **A.** Actually, my arrival at the University of Washington was

1 fortuitous because Mount St. Helens was beginning to erupt, so  
2 my first research project was on the impact of the eruption of  
3 Mount St. Helens on trees that had been covered by ash as well  
4 as trees that had been severely damaged by the eruption  
5 itself, and I have continued to follow many of those same  
6 sites and locations even today.

7 **Q.** Are there particular trees you study?

8 **A.** At Mount St. Helens, there was a whole range of different  
9 species, species that range from the low elevation Douglas  
10 fir, western hemlock to high elevation Pacific silver fir and  
11 some Alpine fir.

12 **Q.** Now, were you at the University of Washington when the  
13 Center for Urban Horticulture was first built?

14 **A.** Yes.

15 **Q.** When was that?

16 **A.** The actual formation of the Center as a concept was in the  
17 late '70s before I arrived, but the hiring of the first  
18 faculty and the beginning of the research program was in the  
19 very early '80s.

20 The actual construction of the Center for Urban  
21 Horticulture and Merrill Hall was '83 or '84, I believe. The  
22 faculty then moved in shortly thereafter.

23 **Q.** This is the faculty from the College of Forest Resources?

24 **A.** Yes.

25 **Q.** Did you move in there?

1   **A.** No, I did not.

2   **Q.** At some point, did you move in there?

3   **A.** Yes, I did. In 1979, in the Fall, the director at the  
4 time, Clint Hamilton took a new position. I became the  
5 interim director. A year later, I became the director of the  
6 Center for Urban Horticulture, so that would have been  
7 September of 2000. My office then formally moved from the  
8 main campus to Merrill Hall, to the Center for Urban  
9 Horticulture.

10   **Q.** Would you take a look at Exhibit 306 which should appear  
11 on the screen to your right. Do you recognize that?

12   **A.** Yes.

13   **Q.** Can you tell us what that is.

14   **A.** That's the lower floor of Merrill Hall.

15   **Q.** I don't see your office on there.

16   **A.** No, my office was one floor above that.

17   **Q.** In general terms, what did the Center for Urban  
18 Horticulture house?

19   **A.** It housed faculty, graduate students. It housed a  
20 herbarium, a library. It housed the Washington State  
21 University/King County's extension program, the Master  
22 Gardener Program, and then it housed associated staff that  
23 assisted the faculty, the students.

24   **Q.** Roughly, how many people worked in the building, would you  
25 estimate?

1   **A.** I would say at least 20.

2   **Q.** As the director, what were your responsibilities?

3   **A.** The responsibilities were for not only for the facility  
4 itself, but also the property that the facility is on. There  
5 is what's now called Union Bay Gardens, about a 20-acre site.  
6 Associated with it is Union Bay Natural Area, which is about  
7 54 acres, and then there was the entire responsibility of all  
8 the wetlands and shorelines that the University of Washington  
9 campus has, which are quite extensive.

10       Then there was the co-management of the Washington Park  
11 Arboretum, which is 230-acre site that co-manages with the  
12 City of Seattle's Parks and Recreation Department.

13   **Q.** In 2001, in addition to being director of the Center for  
14 Urban Horticulture, what kind of professor were you at the  
15 University of Washington?

16   **A.** I continued being a faculty member. I continued all my  
17 teaching responsibility, advising both undergraduate and  
18 graduate students, as well as doing research.

19   **Q.** Did you draw a salary?

20   **A.** Yes.

21   **Q.** Who paid that?

22   **A.** The State of Washington, University of Washington.

23   **Q.** What about your research? How was your research funded?

24   **A.** The research was mostly funded from federal grants that I  
25 had, or that my students had.

1 Q. Was the money paid directly to you or your students?

2 A. The money goes through the University of Washington and  
3 then goes through the department and then it is allocated.  
4 It's sort of a line of responsibility for how budgets are  
5 maintained and allocated.

6 Q. Have you seen a spreadsheet that has a list of all the  
7 research grants that you've had over the last few years at the  
8 University of Washington?

9 A. Yes.

10 Q. Would you look at Exhibit 353. That should be in a  
11 folder. Tell me if you recognize that.

12 A. Yes, I do recognize it as a list of the budgets that I  
13 have had either been awarded or that are pending from -- it  
14 looks like the first date is -- starts in the mid '90s and  
15 goes through the present.

16 Q. That's a University of Washington record?

17 A. That's correct.

18 MR. FRIEDMAN: The Government offers Exhibit 353.

19 MR. FOX: No objection.

20 THE COURT: Admitted.

21 (Exhibit No. 353 admitted.)

22 BY MR. FRIEDMAN:

23 Q. Professor Hinckley, can you look at this and tell us what  
24 federal funding you had in 2001?

25 A. I believe there was three grants. There was a Department

1 of Energy grant that was involved in their global exchange  
2 program. Actually, the western part of their global exchange  
3 program. Two graduate students I had that had NASA  
4 fellowships, that would have been another federal grant.

5 Q. I think if you look at the second line listed for NASA,  
6 could you highlight that. If you touch your screen, you will  
7 get a red arrow, but I believe that's the grant you were  
8 talking about.

9 A. First of all, going back to sort of the grants from the  
10 Department of Energy are the ones I am about to touch, are  
11 these that are listed as West GEC.

12 Q. Why don't we go to the second page first, and then there's  
13 a second West GEC. Do you see any --

14 A. On this page, there's no NASA grants.

15 Q. Right, but if you look at the top line --

16 A. Yes, the West GEC that goes through that period.

17 Q. A Department of Energy grant?

18 A. That's correct.

19 Q. Can you tell us what period that ran and how much money we  
20 are talking about?

21 A. The grant began and was renewed several times, and it was  
22 renewed on a two-year basis. It began in the mid '90s. The  
23 emphasis was examining for cottonwood stands in the Wallula  
24 area, for Douglas fir located at Wind River Canopy Crane, and  
25 for Pacific silver fir located in the City of Seattle's Cedar

1 River Watershed to examine changes that occur in carbon and  
2 water exchange as trees go from being very young to being very  
3 old.

4 Q. Can you see the period from which this two-year grant ran?

5 A. Yes, from July 1, 1999 to June 30, 2001.

6 Q. So was that in force on the date of the fire?

7 A. That's correct.

8 Q. How much was that grant for?

9 A. The grant was \$57,000 I believe is the number listed  
10 there.

11 Q. Then turning back to the previous page, you referred to a  
12 NASA grant?

13 A. Yes.

14 Q. The second line for NASA, can you highlight that for us?

15 A. Sure. About 10 lines down, National Aeronautics and then  
16 it's cut off. Okay. So these go from here down to there.

17 There was two of them that were ongoing during the period  
18 of the fire. One was to a student who was studying actually  
19 in the rain forests of Brazil looking at the role that fires  
20 in the Savannah and in agriculture areas, when started by  
21 farmers, how far they would progress in the forest. So that  
22 was his grant.

23 Then the other student was studying in Panama, and her  
24 grants were looking at gradients going from the west to the  
25 east side of Panama and how forests -- whether you could



1 detect with land site satellite photographs changes in forest  
2 behavior over time.

3 Q. I believe there's a U.S. Forest Service grant. Can you  
4 tell us what that covered?

5 A. The U.S. Forest Service grants were -- well, there was  
6 also a National Science Foundation grant to analyze fire in  
7 Brazil, too.

8 Q. Why were you studying fire in Brazil?

9 A. Well, for a couple reasons. It's an interesting model  
10 system to look at because you are looking at a really large  
11 scale where you have -- to the south of the wet tropical  
12 forest, you have a dry tropical forest and to that south of  
13 that, you have Savannah, and this is the area where people are  
14 rapidly moving farms into.

15 They are using a slash and burn technique, and as a result  
16 the fires often get away and then move into the native dry  
17 tropical forest. As a result, more land is being cleared than  
18 is intended, and we are looking at the mechanisms for how one  
19 might either predict one fire behavior because of climate and  
20 El Niño and El Niña effects, predict when fire may be at a  
21 greater risk and then change regulations regarding local farm  
22 burning practices, or what mechanisms could be used in  
23 restoring dry tropical forests, what species one might select  
24 that would better use water to keep the system moist so when a  
25 fire did get away, it would stop as it hit moist material.

1 Q. There are three National Science Foundation grants listed  
2 here. This is the bottom of those. Can you indicate that for  
3 us?

4 A. Right here is the National Science Foundation.  
5 (Indicating.)

6 Q. The last is the National Science Foundation lines; is that  
7 correct?

8 A. Yes, that's correct, biomass combustion. So that's  
9 located there.

10 Q. For how much was that grant?

11 A. It was for almost \$30,000.

12 Q. In addition to the specific grants about which you've  
13 talked, the ones funding your research, was there other  
14 federal funding that funded research at the Center for Urban  
15 Horticulture in the College of Forest Resources?

16 A. Certainly. Other researchers in the building had varying  
17 degrees, and I assume from either Professor Bradshaw or the  
18 like that you've already heard the particular grants that they  
19 might have had.

20 Q. Are you familiar with something called McIntyre-Stennis  
21 funding?

22 A. Yes.

23 Q. Can you tell us what that is?

24 A. It's an allotted funding that each public institution  
25 receives based upon the acreage of forest lands and the

1 magnitude of the industry production. So if you have "X"  
2 acres of forest land and you have "X" dollars of management  
3 production from forest lands, then you are given an allotment,  
4 and the University of Washington shares a federal allotment  
5 with Washington State University, since we both have forest  
6 industry programs. And then that money is used to fund  
7 faculty salaries, pay for research, pay for graduate students.

8 **Q.** Roughly, during the time when you were director,  
9 specifically in 2001, roughly how much McIntyre-Stennis  
10 funding did the college have?

11 **A.** The college probably had \$385,000 of McIntyre-Stennis  
12 money, of which a portion of my salary would have been  
13 actually on that -- from that source. Probably less than 8  
14 percent.

15 **Q.** The day before the fire, May 20, were you working in the  
16 Center for Urban Horticulture?

17 **A.** Yes. It was a beautiful, sunny day. It was one of those  
18 days where my wife and daughter were at a horse show. My  
19 daughter rides horses. And I decided to use the day to  
20 actually work and catch up on work at the Center.

21 I remember going home at about 8:00 p.m. in the evening.  
22 Another staff member, Ray Larson, was there. I said good  
23 night to him. It was a real sense of accomplishment. I felt  
24 like I had actually caught up a whole bunch of things. We had  
25 just finished completing the master plan for the -- gotten it

1 approved through the council of the City of Seattle, got a  
2 whole bunch of paperwork, thanks for gifts that people  
3 provided, and went home.

4 Q. When did you first hear about the fire?

5 A. My wife received a phone call, which she was more alert  
6 than I and was able to answer, and it was a little after 6:00,  
7 and she said to me: Tom, the Center is on fire.

8 Q. When you say 6:00, do you mean 6:00 a.m. the next morning?

9 A. 6:00 a.m. the next morning.

10 Q. What did you do when she told you that?

11 A. My first reaction was, maybe I left the coffee pot on the  
12 night before or maybe one of the other people working in the  
13 lab just didn't turn something off and we've got -- this is  
14 going to be a problem.

15 So I got dressed and drove in, and as I drove towards the  
16 Center, first I could see some smoke rising up and realized  
17 well, this lab fire was still ongoing. And then as I went  
18 down the hill approaching from 45th towards the Center, I saw  
19 this -- it looked like somebody had taken a colander of  
20 spaghetti and dumped it on the street, there was so many fire  
21 houses on the ground, and I realized a lab fire doesn't  
22 deserve this level of hoses, and then there were seven  
23 television -- or five or seven television trucks with antennae  
24 up, and that's not another lab fire. And then it began to  
25 dawn on me this was something really big.

1 Q. Was the building still on fire when you got there?

2 A. Yes.

3 Q. Would you look at 312L. That should show up on your  
4 computer screen.

5 A. Yes.

6 Q. Can I get you to press the lower left-hand corner on your  
7 screen which will erase all the red.

8 A. Okay.

9 Q. Do you recognize that picture?

10 A. Yes.

11 Q. Why?

12 A. Because it's the south side of Merrill Hall, and you can  
13 clearly see where the fire originated, and you can see exactly  
14 the path the fire took and why there was such extensive  
15 damage, particularly on the upper floor of this building.

16 Q. Can you tell us, maybe put a dot to show us where your  
17 office is in this picture.

18 A. My office is right here.

19 Q. Were you able to see into your office?

20 A. Yeah. We weren't allowed by the fire department to get  
21 close to the building, but there was a nursery that's to the  
22 south of this that I had a key for. So I ran into the nursery  
23 to look at the south side of the building, and I could thereby  
24 see directly into my office.

25 Q. Did you see anything happen in your office?

1 **A.** I saw some of the mess that I'd left in there catch on  
2 fire, and there was sort of -- one part of the room just  
3 flamed up, and I started screaming at some firemen to please  
4 put a hose on it.

5 **Q.** Did they?

6 **A.** They did, yes.

7 **Q.** When were you first able to go into the building?

8 **A.** It was later that afternoon. One of the captains of the  
9 Seattle Fire Department said -- and I think this arose partly  
10 because -- obviously all the occupants of the building were  
11 really worried about the contents of the building, and  
12 particularly the contents of places like the herbarium and the  
13 various labs, and he felt that if one person -- I think  
14 because I was the director, he selected me -- if one person  
15 could actually come out and report what they had seen, that  
16 that would help people understand the sort of nature of the  
17 damage and the potential impact on their own property. So he  
18 took me in. It was a little after 3:00 in the afternoon, I  
19 believe.

20 **Q.** What did you see when you went inside?

21 **A.** It was a very, very different building than when I had  
22 left that Sunday, the previous Sunday evening. There were no  
23 lights on. You could smell this rancid, acrid smoke. You  
24 could see smoke sort of waving up from all sorts of places.  
25 When you walked in, you could look up and see the sky through

1 the roof which no longer was there.

2 As you went down the stairs, he had a big flashlight, he  
3 was constantly warning about where you'd step, and there was  
4 debris everywhere. The carpets were -- your feet were wet  
5 already. I had shoes on, but the water was over the --  
6 sufficiently over the shoes that my feet were now wet, so you  
7 were just constantly reminded of a smell, heat, smoke and  
8 dampness.

9 Q. Did you get a look in your office?

10 A. Uh-huh.

11 Q. What did your office look like?

12 A. It was partly encouraging because the books on the bottom  
13 shelves, I had recognized there were still books on the bottom  
14 shelf.

15 It was really discouraging because things on the desks and  
16 the computer and the monitor and things like that, things that  
17 I had from my kids that were on the wall, were gone. So yeah.

18 Q. Did you look in the library?

19 A. Actually, we had been through -- the Seattle Fire  
20 Department, they had made a superhuman effort to preserve the  
21 library, recognizing its value. There's about 12,000 volumes,  
22 including 700 rare books that were in the library at the time.  
23 They had tarped as many shelves as they could.

24 One of the collections managers from the main library came  
25 out and said, if you don't get these books out in six hours,

1 you are going to lose every book in the library, and the fire  
2 department then said, we will help you move the books out.

3       So we started, I would say at probably at 10:30 or 11:00  
4 in the morning when the other part of the building you could  
5 not safely even get near, we were moving books out of the  
6 library and they were being triaged in the neighboring  
7 building. So I'd already seen the library, seen actually  
8 where the fire had penetrated at several points in the  
9 library, the water on the floor, the smoke smell, but it  
10 wasn't nearly as bad as the rest of the building.

11       The efforts to get the books out resulted in an incredible  
12 volunteer response, students, grad students, faculty, students  
13 from the main campus, staff from the main campus, friends  
14 poured in, what can I do. They brought food. They moved into  
15 this NHS Hall, which is right next to the library, completely  
16 occupied the entire buildings, tables were put up, books were  
17 brought in. A librarian then triaged every book that came in  
18 and was assigned some task, and the task could be drying and  
19 cleaning, the task then could be after drying and cleaning  
20 where it was sent for subsequent recovery.

21       As a result of that really prompt action, about 12 percent  
22 of the total book collection -- only 12 percent of the total  
23 book collection was lost.

24 **Q.** What about your research and your equipment?

25 **A.** Well, my lab was actually back on the main campus so



1 except for my office and all the research and personal items  
2 in the office, I didn't suffer to the extent that the faculty  
3 who actually had both labs and offices at Merrill Hall.

4 **Q.** What did you lose as a result of the fire?

5 **A.** I lost -- well, one of the interesting things about being  
6 in science and research is you accumulate information, and  
7 sometimes that information you get to use right away in  
8 teaching or maybe you get to write it up in a paper for  
9 research, but it also becomes sort of your legacy, your  
10 history.

11 So, almost all of the research notes that I had from  
12 various projects, including looking at the effects of the  
13 Spruce Budworm on defoliation of Douglas fir and grand fir in  
14 Montana and Washington, that was all gone.

15 I had an incredible slide collection from the eruption of  
16 Mount St. Helens, lost about 30 percent of that. And then  
17 there was -- the one thing that -- there was a heroic effort  
18 made to recover things. Recovered the hard drive on the  
19 computer, for example, they got about 65 percent of the hard  
20 drive back. But I think anyone who knows and keeps a  
21 computer, you keep a certain organization on the computer, and  
22 when they recover lost files, that organization is totally  
23 gone.

24 So the same with all the notes and all the slides,  
25 whatever organization I weakly had, it was either gone because

1 I had to throw the material out or it was destroyed because it  
2 went up in flames or it was now in a total state of  
3 disorganization.

4 Q. Did you have some equipment that was covered by the  
5 federal funding they are talking about?

6 A. Yes, there was actually some equipment that was in the  
7 hallway outside Toby's office that was so severely damaged  
8 that it was not salvageable.

9 Q. What was that?

10 A. There was two data loggers, I believe, Campbell Scientific  
11 data loggers that had been used -- we'd been using at the  
12 Cedar River Watershed site to collect information about  
13 climate that the trees that are in the watershed see.

14 Q. After the fire, were you able to continue immediately with  
15 your research?

16 A. No. I mean, I made a major effort and the grad students  
17 and students I had were really understanding about the fact  
18 that I was now focused on something completely different. The  
19 focus -- because I was director of the Center, the focus was  
20 not only on how faculty, staff and students in the Center were  
21 affected, but it was on all right, we don't have space, so how  
22 are we going to get space to function, how are we going to  
23 reinstate our outreach program, how are we going to get the  
24 library to be open again, how are we going to get students who  
25 are working on their thesis as their graduate programs

1 finished in a timely way. Their funding was going to run out,  
2 how were we going to get money for them, how were we going to  
3 rebuild this building, where's the money going to come for  
4 rebuilding this building.

5 I would say until November, December, I don't think I had  
6 a free moment where I actually got to think about what  
7 research responsibilities that I had. In fact, as a result of  
8 not thinking about it, a renewal deadline for the Department  
9 of Energy grant, I just let that go by. Four hours of my  
10 time, I would have had another \$60,000 from DOE to do  
11 research. I didn't have that four hours.

12 **Q.** With the Center burned, what space did you find to  
13 continue?

14 **A.** Unlike Sarah, who ended up in a trailer, I ended up in the  
15 head house of the greenhouse, and this is a space where you  
16 plant plants and things like that. They had an old tool room  
17 that they took all the tools out of and they put partitions in  
18 there, and three of us had shared offices there.

19 **Q.** When do you think is the first time you did anything  
20 research related again after the fire?

21 **A.** Other than helping my students, when I actually did  
22 hands-on, four years, maybe. Three, four years maybe.

23 **Q.** What were you doing for those three, four years?

24 **A.** Doing the job as director of the Center, which I don't  
25 think at the time I could have expected a rebuilding project,

1 and all of the sort of ramifications of rebuilding, including  
2 fund raising and holding auctions and doing all sorts of  
3 things that were going to take that amount of time.

4 Plus you've got -- the principal responsibilities you have  
5 as a faculty member is to teach your classes. Not only did I  
6 teach my classes, but the college was undergoing a complete  
7 programatic change so I was teaching new classes.

8 So as a result, I didn't really have that direct hands-on  
9 time. In fact, last Summer is the first time I actually got  
10 to spend -- the last two Summers, that's the first time I  
11 actually got to spend days in the field which is really  
12 important for grad students to give them a sense that you  
13 really are interested in what they are doing and that you  
14 spend days in the field. One of my students is working on top  
15 of Snowshoe Mountain and so I spent five days there with him.

16 **Q.** For how long did you stay director for the Center of Urban  
17 Horticulture?

18 **A.** Through June 2004.

19 **Q.** Had it been rebuilt by then?

20 **A.** No, the new building wasn't completed and open until late  
21 December 2004.

22 **Q.** How many years of research do you think you lost or  
23 weren't able to do because of this fire?

24 **A.** It's really difficult to say because I think what I did is  
25 I completely changed what I did. I became much interested in

1 an exchange program with China involving undergraduate  
2 students. I became interested in a graduate program where  
3 students got to study internationally, that didn't involve me  
4 re-learning what I had known really well, and it's only been  
5 the last couple years where I have had students working on  
6 projects that I feel real competent in.

7 Q. Since 2005 roughly or so?

8 A. Yeah.

9 Q. So is it fair to say four years basically before you  
10 returned to research?

11 A. Yeah, I would say that.

12 Q. Thank you very much, Professor.

13 MR. FOX: No questions.

14 THE COURT: No questions. All right. Then you are  
15 excused.

16 MR. FRIEDMAN: The Government calls Gary Quarfoth.

17 GARY QUARFOTH, called as a witness, duly sworn

18 THE COURT: Take the witness chair, please.

19 DIRECT EXAMINATION

20 BY MR. FRIEDMAN:

21 Q. Good morning, Mr. Quarfoth.

22 A. Good morning.

23 Q. Can you tell us your whole name and spell your last name  
24 for the Court Reporter.

25 A. Gary Quarfoth, and the last name is Q-U-A-R-F-O-T-H.

1 Q. Where do you work?

2 A. I work at the University of Washington.

3 Q. What is your job there?

4 A. My title is Associate Vice Provost and Budget Director,  
5 and it's Associate Vice Provost of the Office of Budget and  
6 Planning at the University of Washington.

7 Q. You are the head of the Office of Planning and Budgeting?

8 A. Yes, I am currently the head of the Office of Planning and  
9 Budgeting.

10 Q. What does that office do?

11 A. It coordinates the University's operating budget, the  
12 University's capital budget, it assigns all of the space at  
13 the University of Washington and does various other  
14 institutional research for the University.

15 Q. It's the central financial office?

16 A. Yes, one of the central financial offices.

17 Q. Now, are you familiar with the -- I guess how the real  
18 estate at the University of Washington is held?

19 Who owns the land on which the University of Washington is  
20 located?

21 A. Well, the University does, so it's ultimately the State of  
22 Washington that owns the land on which the University  
23 facilities are located.

24 Q. Does the same apply to the buildings?

25 A. Yes.

1 Q. And specifically the Center for Urban Horticulture?

2 A. Yes.

3 Q. Now, we've heard about the College of Forest Resources.  
4 How does the University decide to which schools particular  
5 buildings are assigned?

6 A. Historically, space is assigned based on the type of space  
7 that a particular college or department needs, the amount of  
8 research space, amount of office space, and colleges and  
9 departments are assigned to buildings based on their needs.

10 Q. But they don't own the buildings, they are just assigned  
11 them?

12 A. That's correct, it is all centrally managed by the  
13 University.

14 Q. In 2001, if you were -- from your perspective, if you were  
15 to describe the University of Washington, how would you  
16 describe it?

17 A. The way we describe the budget when we have the Board of  
18 Regents approve it is to think of the University in sort of  
19 three large pieces. One piece is sort of the core education  
20 part of the University's budget, that's probably the part that  
21 most people are familiar with.

22 Another large part of the University's budget is the  
23 research enterprise of the University of Washington, which as  
24 a research University, the University does a great deal of  
25 research.

1       The University, because of the nature of its operations,  
2 also runs a lot of auxiliary businesses. So it runs a major  
3 medical center, it runs a very extensive housing and foods  
4 services operation, it has activities of that sort.

5 **Q.** In 2001, roughly how big was the University, in financial  
6 terms?

7 **A.** If you looked at the operating budget, it was I believe a  
8 little over \$2 billion in 2001.

9 **Q.** Have you ever used the phrase holding company ever?

10 **A.** Yes. For the public, we often say -- it can be useful to  
11 think of the University as a holding company where the Board  
12 of Regents oversees those three broad functions that I just  
13 discussed.

14 **Q.** How does the Center for Urban Horticulture fit into all of  
15 this?

16 **A.** The Center for Urban Horticulture is part of the College  
17 of Forest Resources. They teach courses and have students at  
18 the University of Washington. They conduct research.

19 **Q.** As part of the overall enterprise?

20 **A.** As part of the overall enterprise, yes.

21 **Q.** You said \$2 billion a moment ago. What does that \$2  
22 billion represent? What is that?

23 **A.** That would be the amount of revenues or the amount of  
24 expenditures of the University approximately in that  
25 particular fiscal year.



1 Q. Does the University of Washington have financial  
2 statements?

3 A. Yes, it does. It publishes an annual financial report.

4 Q. Like any public business?

5 A. Yes.

6 Q. Are those statements audited?

7 A. Yes. The University has an independent auditor. It's  
8 been the firm KPMG for a number of years, and as a normal part  
9 of preparation of the financial statements, KPMG certifies  
10 that they think the numbers included in those statements are  
11 accurate.

12 Q. Would you look at Exhibit 350, that should be in a folder  
13 in front of you, and tell me if you recognize that.

14 A. Yes. This is a copy of the University of Washington's  
15 annual report for fiscal year 2001, which is the July 1, 2000  
16 through June 30, 2001 time period.

17 MR. FRIEDMAN: Government offers 350.

18 MR. FOX: No objection.

19 THE COURT: Admitted.

20 (Exhibit No. 350 admitted.)

21 BY MR. FRIEDMAN:

22 Q. This should show up now to the screen to your left. Let's  
23 turn to something marked page 31 of that exhibit. Once that  
24 appears on the screen, if you can tell us what that is.

25 A. That is a copy of the letter that is included in the

1 record, that is the official certification from the firm KPMG  
2 that, as it states in the final paragraph there, "In our  
3 opinion, based on our audit and report of other auditors, the  
4 financial statements referred to above presented fairly, in  
5 all material respects, the financial position of the  
6 University of Washington."

7 Q. Then five pages forward to page 36, if you could tell us  
8 what that is.

9 A. That is a summary statement of the total revenues and  
10 total expenditures of the University in that fiscal year.

11 Q. And income statement basically?

12 A. Yes.

13 Q. And then if we can highlight just the revenue section in  
14 the fourth of the five columns, can you tell us what this  
15 portion of the statement shows?

16 A. This summarizes the revenues of the University of  
17 Washington in that particular year. There are a variety of  
18 categories listed there.

19 Q. The first category is tuition and fees?

20 A. That's correct.

21 Q. What is that?

22 A. That is a combination of the tuition that students pay and  
23 various student fees that are charged like services and  
24 activity fees, a technology fee and a variety of other student  
25 fees.

1 Q. What do the students receive in return for tuition?

2 A. They receive education from the University of Washington  
3 and hopefully a degree.

4 Q. Is the student body -- from where does the student body  
5 come?

6 A. The student body comes from both within the State of  
7 Washington and from outside of the State of Washington.

8 Q. Do you know in 2001 what portion of the student body came  
9 from outside the State of Washington? Let's start with  
10 undergraduates.

11 A. For undergraduates, for the 2000-2001 academic year from  
12 the Fall data quarter that the University uses to look at  
13 this, there were 3,051 nonresident undergraduate students at  
14 the University of Washington.

15 Q. What was the total student body?

16 A. There were approximately 26,000 undergraduate students, so  
17 that I believe is 11.7 percent of the undergraduate student  
18 population was nonresident students.

19 Q. What about the graduate student body?

20 A. The graduate student body, in that same academic year,  
21 there were 3,329 graduate students, which was 39-and-a-half  
22 percent of the approximately 8400 graduate students in that  
23 particular academic year.

24 Q. As far as you know, were those same percentages applied to  
25 the College of Forest Industry Services?

1   **A.** I would imagine they would.

2   **Q.** Does the University affirmatively seek out students from  
3 out of state?

4   **A.** Yes, it does. At the undergraduate level, the University  
5 recruits students from out of state by sending our recruiters  
6 to college fairs and cities in other states, by doing direct  
7 mailing to students in those states, by responding to  
8 information requests that we receive from students from those  
9 states who might be interested in attending the University of  
10 Washington.

11       At the graduate level, it is generally the University's  
12 policy to try to attract in the best students they can  
13 possibly get, sort of irrespective of whether those students  
14 are coming from the State of Washington or from other states.

15   **Q.** For undergraduates, is there a reason the University tries  
16 to get students from out of state?

17   **A.** There are two reasons why the University tries to get  
18 students from out of state. I believe the faculty believe  
19 that having a broader geographic mix of students sort of  
20 improves the quality of discussion in many courses. It has a  
21 broader exposure of students from people from a bunch of  
22 different places. As nonresident students also pay  
23 substantially more tuition than resident students pay, it's a  
24 financial matter in part to have nonresidents. They provide  
25 additional resources that help improve the education for all

1 students at the University.

2 Q. That's something you count on in the budgeting process?

3 A. Yes, that's correct.

4 Q. Can we go back to page 36 of the last exhibit. In  
5 addition to tuition, is federal funding another source of  
6 revenue that's important for the University?

7 A. Yes, it is. At least most of the research that is funded  
8 by outside entities at the University is funded by the federal  
9 government.

10 Q. Do you see that reflected in this income statement?

11 A. Yes. In the revenues category, the third row is  
12 government grants and contracts, and in fiscal year 2001,  
13 which would be the column that's labeled June 30, 2001, the  
14 University received approximately \$571 million in government  
15 grants and contracts.

16 Q. Do you have a general sense of how much of that is federal  
17 versus possibly state grants and contracts?

18 A. That is overwhelmingly federal. I would say probably over  
19 90 percent federal grants and contracts.

20 Q. Approximately 25 percent of the University's revenue  
21 roughly?

22 A. Yes.

23 Q. How does the University of Washington rate against other  
24 colleges in terms of the amount of federal funding it  
25 receives?

1 **A.** The University of Washington is the -- sort of the second  
2 largest recipient of federal research funds in the country,  
3 and I believe among public universities, it is the first --  
4 the highest -- receives more federal research funds than any  
5 other public University in the country.

6 **Q.** Which is the only one in the -- in a private university,  
7 which university receives more?

8 **A.** Johns Hopkins receives more federal research funding than  
9 the University of Washington does.

10 **Q.** Are you familiar with something called the Office of  
11 Sponsored Programs at the University?

12 **A.** Yes, I am.

13 **Q.** What is that, in general?

14 **A.** That is the office through which all of the grant  
15 applications that the faculty at the UW send in to the  
16 organizations that are offering funding. It is the channel  
17 through which those grants go to those organizations.

18 **Q.** Do they put out an annual report?

19 **A.** Yes, they publish an annual report that summarizes both  
20 the awards of grants that the University received in a  
21 particular year as well as the expenditures that were made on  
22 grants and contracts in that particular year.

23 **Q.** Would you take a look at Exhibit 351 and tell me if you  
24 recognize that.

25 **A.** Yes. That is the report that the Office of Research

1 prepared for fiscal year 2001 that summarizes grant, awards  
2 and expenditures in that fiscal year.

3 MR. FRIEDMAN: The Government offers 351.

4 MR. FOX: No objection.

5 THE COURT: Admitted.

6 (Exhibit No. 351 admitted.)

7 BY MR. FRIEDMAN:

8 Q. If we could turn to the 12th page of that. We have a  
9 numbering problem. I am going to grab a hard copy, if it's  
10 all right, to show it to you that way.

11 MR. FRIEDMAN: I apologize, Your Honor.

12 BY MR. FRIEDMAN:

13 Q. Do you recognize that chart?

14 A. Yes. That is a summary table that is included in the  
15 report that lists the federal grant and contract awards  
16 received in fiscal year 2001. The total federal grant and  
17 contract awards received in that fiscal year was \$552.4  
18 million.

19 Q. That's slightly different than the number we looked at in  
20 the annual report which was approximately \$570 million?

21 A. That's correct.

22 Q. Do you have a general explanation for why they are  
23 slightly different?

24 A. The numbers in the annual report include financial aid  
25 dollars that the University receives from both the federal

1 government and from the State of Washington. So they are part  
2 of the total that's in the annual report, and they are not  
3 included in the total in this offices sponsored programs  
4 report.

5 **Q.** Does this report also break out any figures by college  
6 within the University?

7 **A.** Yes. I believe on the tables summarizing expenditures, it  
8 summarizes expenditures for each of the colleges at the  
9 University of Washington.

10 **Q.** Do you recognize -- turning to page 72 of this exhibit,  
11 can you tell us what that shows? This is a two-page exhibit.  
12 I will put page 73 up in just a moment.

13 **A.** This lists various colleges at the University of  
14 Washington, and in some instances has departmental summaries  
15 underneath that college.

16       Toward the bottom of the page, there is a summary total  
17 for the College of Forest Resources. This page lists  
18 funding -- well, expenditures on grants that were received  
19 from the Department of Health and Human Services, Department  
20 of Defense and Department of Energy in that particular fiscal  
21 year.

22 **Q.** Then turning to the next page, continuing the same line,  
23 are you able to tell the total amount of federal money spent  
24 by the College of Forest Resources in 2001?

25 **A.** I am not sure I have rows lining up correctly here.



1 Q. I believe you do now.

2 A. Okay. It's a matter of subtraction. The total grants  
3 which would include the federal and the nonfederal dollars  
4 that are listed there in the second column from the right, if  
5 you subtract the \$2.37 million from the \$7.5 million, it's  
6 about \$5.2 million in federal expenditures on federal grants  
7 that year.

8 Q. So more than \$5 million is going to the College for Forest  
9 Resources?

10 A. Correct.

11 Q. Let's go back to page 50 which is the overall income  
12 statement.

13 Exhibit 350, Agent Halla, page 36. If we could highlight  
14 the revenue portion once again.

15 Three lines up that says --

16 There's a line three lines up from the sales and services  
17 of Auxiliary Enterprises. What is an auxiliary enterprise?

18 A. That would be a combination of -- it's a whole variety of  
19 auxiliary enterprises. The biggest would be housing and food  
20 services, intercollegiate athletics, there are some stores,  
21 athletic operations in there, items of that sort.

22 Q. Miscellaneous services operated by the University?

23 A. That's correct.

24 Q. In 2001, how much revenue did the University get from this  
25 collection of businesses?

1 A. In that column, there is \$266,713,000 of revenue in that  
2 particular fiscal year.

3 Q. Would members of the student body be contributing to or  
4 involved in generating that revenue?

5 A. Yes. A large portion of that revenue would be from  
6 housing and food services, and students are among the primary  
7 users of the services provided by that organization.

8 Q. Now, are you familiar with an arson that took place -- or  
9 a fire that took place in 2001?

10 A. Yes, I am.

11 Q. Have you seen documents relating to that?

12 THE COURT: Mr. Friedman, let me ask you before you  
13 get into that, how long would this take?

14 MR. FRIEDMAN: Five minutes, then we would be done  
15 with this witness.

16 THE COURT: All right. Let's see if we can do it.

17 MR. FRIEDMAN: Thank you, Your Honor.

18 BY MR. FRIEDMAN:

19 Q. Would you look at 355 and tell me if you recognize that.

20 A. Yes, I do. This is a letter that was sent by Lee Huntsman  
21 who at the time was the provost of the University of  
22 Washington to representative Frank Chopp who at that point was  
23 cospeaker of the U.S. House of Representatives.

24 It was sent on May 30, 2001, which was a little more than  
25 a week after the fire at the Center for Urban Horticulture,

1 and it summarizes what the University's estimates were of how  
2 much it was going to cost to recover from that fire.

3 MR. FRIEDMAN: The Government offers 355.

4 MR. FOX: Subject to earlier discussion, no  
5 objection.

6 MR. FRIEDMAN: If we could display this on the  
7 overhead camera.

8 THE COURT: Admitted.

9 (Exhibit No. 355 admitted.)

10 BY MR. FRIEDMAN:

11 Q. I think you used the phrase of U.S. House of  
12 Representatives?

13 A. I meant the State of Washington House of Representatives.

14 Q. This letter sets forth the costs the University expects to  
15 incur?

16 A. Yes.

17 Q. Let's go through those. Item 1, can you tell us what that  
18 is?

19 A. Obviously, there were a number of faculty and students and  
20 staff whose offices and labs had been destroyed in the fire,  
21 so we had to find ways of housing all of those folks, and we  
22 had to clean up the site after the fire.

23 So the recovery number there includes both what were  
24 estimates of the costs to clean up the site as well as costs  
25 for renting trailers, which was the primary means we used for

1 housing the faculty and students who had been at that site.

2 Q. What was the total estimate for recovery?

3 A. Total estimate was \$915,000.

4 Q. Item 2 is interim security guard?

5 A. Yes. There were other facilities at the same location,  
6 and the University thought it prudent to request funding for a  
7 security guard for those facilities and asked for \$75,000 for  
8 that purpose.

9 Q. Then turning to the next page, item 3.

10 A. Item 3 was an estimate of what it would cost to  
11 reconstruct the building, and the cost figure that was come up  
12 with was \$4,130,000.

13 Q. And then finally, increased fire and personal safety?

14 A. Correct. It was assumed that when we rebuilt the  
15 building, we would probably add additional fire and safety to  
16 the building that was sort of beyond just replacing the  
17 structure that had been there.

18 Q. Turning back to the first page, the last paragraph before  
19 you get to all these totals with all these items added up,  
20 correct?

21 A. Yes.

22 Q. What was the total amount the University was requesting?

23 A. It was \$5,395,000.

24 Q. Did the University receive that money?

25 A. The University received part of that money. The state

1 legislature provided \$4,130,000 to reconstruct the building.

2 Q. So basically, item 3 got paid and the others didn't?

3 A. That's correct.

4 Q. Did it actually end up costing \$4.13 million to construct  
5 the building?

6 A. It cost slightly more than that for two reasons. One is  
7 that after the design was completed the -- well, two things  
8 happened. We did a detail design. The cost of simply  
9 replacing the building was estimated to be \$5.4 million. The  
10 University then added some scope to the project because donors  
11 came in and offered funding for the building, and the  
12 University had some changes it wanted as well.

13 So it was approximately \$8.2 million to build the building  
14 that was reconstructed, but of that total we estimated that  
15 \$5.4 million was the cost to replace the building that had  
16 been there.

17 Q. Did the University in fact incur recovery costs?

18 A. Yes, it did.

19 Q. Roughly, how much did the University incur for those?

20 A. I think it was on the order of \$500,000 or \$600,000.

21 Q. That's for trailer rental and clean up, demolition?

22 A. Yes.

23 Q. So adding that to the \$5.4 million, do you have an  
24 estimate for the total financial harm --

25 A. It would be approximately \$6 million.

1 Q. Thank you very much, Mr. Quarfoth.

2 MR. FOX: We have no questions.

3 THE COURT: All right. This witness can be excused.  
4 Of course, we will take the noon recess at this time. As  
5 always, when you are through with your lunch and you report  
6 back to the building, return to the jury room. Leave your  
7 books on the chair and don't discuss the case.

8 (Jury not present.)

9 THE COURT: All right. We will be at recess and give  
10 you a chance to get a sandwich.

11 MR. FRIEDMAN: The issue we discussed concerning  
12 Mr. Corrina, he'll be on shortly after the lunch break. If we  
13 could discuss that before he testifies, that would be helpful.

14 THE COURT: I intend to do that.

15 THE CLERK: All rise. Court is in recess.

16 (Luncheon recess.)

17 (Jury not present.)

18 THE COURT: All right, you may be seated.

19 MR. FOX: Your Honor, we were just informed that  
20 Mr. Bartlett, that they plan to take a witness, Jennifer  
21 Kolar, out of order. We had not been notified that she was on  
22 the list for today.

23 Before lunch, we thought she'd be on towards the end of  
24 the day and they would start their direct, but I am not  
25 prepared for cross-examination for today.

1           THE COURT: That hasn't been provided, as I have  
2 indicated?

3           MR. BARTLETT: We've just had some issues come up,  
4 Your Honor, in the government's case-in-chief, and this works  
5 better for our case-in-chief.

6           THE COURT: I understand that, but as to supplying  
7 them with the gist of the testimony --

8           MR. BARTLETT: They have all of that, Your Honor.  
9 They were aware there was a possibility she was going to  
10 testify today, although not in this order.

11          MR. FOX: We weren't yesterday. In terms of direct,  
12 I think that that's fine, but I have materials back in my  
13 office that I actually did not bring with me today because I  
14 didn't anticipated that she would even be on the witness  
15 stand.

16          THE COURT: So what are you talking about then, doing  
17 direct examination and defer cross-examination?

18          MR. FOX: I can do my cross-examination tomorrow.

19          THE COURT: What's the necessity of the fashion we  
20 are talking about now?

21          MR. BARTLETT: Just the way the government wants to  
22 put on our case-in-chief.

23          THE COURT: I understand that, but we often call  
24 people out of turn to accommodate everybody. Is this not one  
25 of those cases?

1 MR. BARTLETT: It's the way we are going to proceed  
2 this afternoon, Your Honor.

3 THE COURT: The way you are going to proceed or you  
4 wish to proceed?

5 MR. BARTLETT: I am sorry, Your Honor; the manner  
6 that we wish to proceed. We have a very short witness, and  
7 then we want to call Jennifer Kolar.

8 THE COURT: You have that information now that you  
9 can share? Do you have that information?

10 MR. FOX: Your Honor, my trial notebooks for  
11 Ms. Kolar are actually back in my office. All I am saying is,  
12 if they want to put direct on for Ms. Kolar.

13 THE COURT: Is that the witness you are talking about  
14 calling right now?

15 MR. FOX: Yes.

16 THE COURT: Ms. Kolar.

17 MR. FOX: Which is a complete change from everything  
18 that they told us.

19 THE COURT: Wasn't she on the list for the day?

20 MR. BARTLETT: Your Honor, I did not realize there  
21 was going to be such a major issue. We will withdraw our  
22 request and go back to the original order.

23 THE COURT: Who do we have next then?

24 MR. FRIEDMAN: David Gratzner, Your Honor.

25 THE COURT: Who?



1 MR. FRIEDMAN: David Gratzner.

2 THE COURT: How long is this witness and how long  
3 before we get to the next witness?

4 MR. FRIEDMAN: He is approximately ten minutes.

5 THE COURT: And who else do we have today?

6 MR. FRIEDMAN: We have a one-paragraph stipulation in  
7 place of Mr. Richard Wedderspoon, and then we would go to  
8 Robert Corrina, which means we should probably address the  
9 issues that we have with him.

10 THE COURT: All right. That's what I want to go to.  
11 I have gone through what's been said here and thought  
12 about it, and the Court's ruling on it is that is hearsay. I  
13 can't find any way to address it any other way. If it comes  
14 up in the fashion stated in the motion, then -- it shouldn't  
15 come up in the fashion that's addressed in the motion.

16 The Court is granting the motion. I see it no different  
17 than if you go up to the mall and tell 100 people up there  
18 what your position is. I think Mr. Bloom stated, when he was  
19 speaking in front of the jury about she is innocent and acquit  
20 her, plea of not guilty, all these things have been said. And  
21 that says no more than that.

22 So the Court is granting the motion on cross-examination  
23 as to the call going to Mr. Corrina saying that I am innocent,  
24 and you should tell the truth as the lawyer said. Don't go  
25 there, period.

1           MR. BLOOM:   Either one of those, I can't say that she  
2 told him to tell the truth?

3           THE COURT:   The motion has been granted, and you are  
4 not to do that.

5           MR. BLOOM:   The motion was only about the first part.

6           THE COURT:   It was about the whole thing, if you read  
7 the motion.

8           The Court has granted the motion. Your exceptions are  
9 made, and you can do what you will with it, but that's the  
10 court's ruling on it.

11          MR. BLOOM:   I am not asking you to change your mind,  
12 I just want to complete the record.

13          What happened here is Mr. Corrina, after he was told that  
14 by Briana Waters, the first time they eventually did show up  
15 to see him, he lied to them. Now, I am going to point out  
16 that he lied to them, and there's going to be some thought  
17 that he lied because Briana Waters thought or suggested to him  
18 that he should lie. That's a real problem; that is misleading  
19 to the jury.

20          THE COURT:   You can address that in any way you think  
21 you should in cross-examination, except don't go into it the  
22 way the motion is stated. That's all I am saying to you.  
23 That's my ruling.

24          Are we ready for the jury now?

25          MR. FRIEDMAN:   We are, Your Honor.

1 THE COURT: Bring them in.

2 (Jury present.)

3 THE COURT: All right. You may be seated.

4 Call your next witness.

5 MR. FRIEDMAN: The government calls David Gratzner.

6 Just come forward, sir and be sworn.

7 Raise your right hand, please.

8 DAVID GRATZER, called as a witness, duly sworn.

9 THE COURT: Come around and take the witness chair,  
10 please.

11 DIRECT EXAMINATION

12 BY MR. FRIEDMAN:

13 Q. Good afternoon, Mr. Gratzner.

14 A. Good afternoon.

15 Q. Can you tell us your whole name and spell your last name  
16 for the record?

17 A. David Gregory Gratzner, G-R-A-T-Z-E-R.

18 Q. Where are you from?

19 A. Spanaway, Washington.

20 Q. Were you born and raised around here?

21 A. Born in Puyallup.

22 Q. In 2001, for whom were you working?

23 A. Budget Rent A Car.

24 Q. Were you working at a particular location?

25 A. At the Olympia rental car location, at 1100 South Plum

1 Street.

2 Q. What was your job there?

3 A. I was the branch manager.

4 Q. Can you give us one or two sentences telling us what that  
5 means you did?

6 A. I was in charge of the employees that worked there. Hired  
7 them; in charge of, I guess, developing them for customer  
8 service skills and sales.

9 Q. Managing the branch?

10 A. Managing the branch, yes.

11 Q. I am going to put on the overhead projector a document  
12 that's marked as 771. It's already been introduced into  
13 evidence.

14 Do you recognize this document?

15 A. Yes, it's a copy of the information on a rental agreement.

16 Q. Is that a rental that took place from the location which  
17 you worked?

18 A. Yes, it was.

19 Q. If we look down a little in from where my pen is, do you  
20 see a box that's labeled "open date"?

21 A. Yes, I do.

22 Q. What does that tell us?

23 A. It says the rental took place on May 19 of 2001, at 12:31  
24 p.m.

25 Q. That's the time the rental began?

1 A. Began, yes.

2 Q. And this is a rental, just to be clear, by -- can you tell  
3 us the name of the renter?

4 A. Kara Denise Larson.

5 Q. Then if we go down to close date, what time does this  
6 record show for the close date on this rental?

7 A. May 22, 2001, at 6:33 a.m.

8 Q. Now, is the Plum Street office of Budget open at 6:30 in  
9 the morning?

10 A. No, it's not.

11 Q. In 2001, what were the hours for that office?

12 A. From 7 a.m. to 6 p.m.

13 Q. If someone wanted to return a car after 6 p.m., was there  
14 a procedure in place for that?

15 A. We have a night drop. It's a secured lockbox, basically,  
16 where customers, if they return it after we close can drop the  
17 keys off, and then we check it in the next morning.

18 Q. What time do employees typically arrive at that office and  
19 start checking in cars?

20 A. 6:30 a.m. was the start time.

21 Q. I think you may have said. The office actually opened  
22 formally at what time?

23 A. 7 a.m.

24 Q. So from this record, what can you tell about the time that  
25 the car was actually returned?

1 A. Since it was closed at 6:33 a.m., which is before they  
2 opened, it looks like the car was dropped off after we had  
3 closed the previous day. So it was returned sometime between  
4 6 p.m. and 6:33 a.m. the next day.

5 Q. Sometime after 6 p.m. on May 21st?

6 A. Yes.

7 Q. Before you opened the next morning?

8 A. Yes.

9 MR. FRIEDMAN: One moment, Your Honor.

10 Thank you very much, Mr. Gratzner. No further questions.

11 MR. FOX: We have no questions, Your Honor.

12 THE COURT: All right. You may step down.

13 Next witness.

14 MR. FRIEDMAN: Your Honor, at this point we have a  
15 very brief stipulation in place of a witness. If I could just  
16 read that to the jury and show them the two exhibits referred  
17 to in the stipulation.

18 THE COURT: Which one are you talking about?

19 MR. FRIEDMAN: The stipulation regarding photographs,  
20 and it would be basically stipulating to what two photos are,  
21 and then I would ask to show those to the jury.

22 I can bring a copy up, if the Court doesn't have it.

23 THE COURT: I am looking at three stipulations here.  
24 Which one?

25 MR. FRIEDMAN: This would be after those three.

1 There were three that preceded that.

2 THE COURT: I don't have that.

3 Mr. Fox and Mr. Bloom, you agree with the stipulation.

4 MR. FOX: Yes.

5 THE COURT: Go ahead.

6 MR. FRIEDMAN: The stipulation reads:

7 The United States of America and the defendant, Briana  
8 Waters, agree and stipulate as follows:

9 Exhibits 775 and 776 are photographs of a Toyota Camry  
10 with vehicle identification number (VIN) 4T1BG22K21U816051.  
11 These photographs were taken in January 2007. The exhibits  
12 are authentic and are admissible at trial without calling a  
13 witness to establish a foundation or the authenticity of the  
14 photographs.

15 If I could, I would ask that the --

16 THE COURT: The date on that?

17 MR. FRIEDMAN: The date of the stipulation is today,  
18 the 18th of February -- or 19th of February.

19 THE COURT: All right. You may publish.

20 MR. FRIEDMAN: If we could publish 775 for a moment.  
21 They are electronic.

22 The government offers both of those, Your Honor.

23 MR. FOX: No objection.

24 THE COURT: Admitted.

25 (Exhibits Nos. 775 and 776 admitted.)

1 MR. FREIDMAN: Thank you, Your Honor. The government  
2 would call Robert Corrina.

3 THE COURT: I will have you come forward and be  
4 sworn.

5 ROBERT CORRINA, called as a witness, duly sworn.

6 THE COURT: Come around and take the witness chair,  
7 please.

8 Questions?

9 MR. FRIEDMAN: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. FRIEDMAN:

12 Q. Good afternoon, Mr. Corrina.

13 A. Good afternoon.

14 Q. Could you tell us your whole name and spell your last  
15 name?

16 A. My full name is Robert Corrina, last name is  
17 C-O-R-R-I-N-A.

18 Q. Where were you born?

19 A. I was born in the Philadelphia, area.

20 Q. Did you grow up in that area?

21 A. Yes, I did.

22 Q. Did you attend high school there?

23 A. Yes, I did.

24 Q. When did you finish high school?

25 A. '91.



- 1 Q. After high school , where did you go?
- 2 A. I moved around quite a bit, University of Massachusetts,  
3 worked in New Orleans, and eventually Colorado.
- 4 Q. Where did you go to the University at Massachusetts?
- 5 A. University of Massachusetts at Amherst.
- 6 Q. For how long were you there?
- 7 A. For about a year.
- 8 Q. What did you study there?
- 9 A. Philosophy, I was a philosophy major.
- 10 Q. Why did you leave school?
- 11 A. That's a good question. I felt like traveling, basically,  
12 so I did.
- 13 Q. What took you to New Orleans?
- 14 A. That's a good question, too. I wanted to travel and see a  
15 more interesting destination.
- 16 Q. You said you got to Colorado in about 1995?
- 17 A. Yes, I got to Colorado in about 1995.
- 18 Q. And to where did you move in Colorado?
- 19 A. Greeley, which is north of Denver, Denver area.
- 20 Q. What took you there?
- 21 A. That time I sort of just wound up there.
- 22 Q. Did you meet anyone there?
- 23 A. Yes, I met Kara Larson, and we went on to have a child and  
24 get married.
- 25 Q. She's currently your wife?

1 A. Yes, that's correct.

2 Q. Now, is your child a boy or girl?

3 A. My son.

4 Q. When was your son born?

5 A. 1998.

6 Q. And did that have an impact on where you lived?

7 A. That was -- that happened in Olympia, Washington.

8 Q. What brought you to Olympia, Washington?

9 A. Several reasons. We heard they had home birth available  
10 in Washington State, and that it was a good place -- Olympia  
11 was a good place for families from various people and also my  
12 cousin Briana lived there.

13 Q. When you say home birth, you are talking about the birth  
14 with a midwife?

15 A. A midwife comes to your home on the day, and unless  
16 there's a problem, the birth happens at home.

17 Q. You said -- when you say your cousin Briana, to whom are  
18 you referring?

19 A. Briana Waters; she's here today.

20 Q. Can you describe what she's wearing for the record?

21 A. She has what looks like a white sweater and glasses.

22 MR. FRIEDMAN: May the Court record reflect that the  
23 witness has identified the defendant?

24 THE COURT: It will.

25 BY MR. FRIEDMAN:

1 Q. You said the fact that she lived in Olympia was a factor  
2 in you coming to Olympia?

3 A. Uh-huh.

4 Q. Did you reach out to her?

5 A. I did. She was -- we were able to stay with her when we  
6 came out.

7 Q. But had you been in contact with her before you came out?

8 A. Yes.

9 Q. Tell us about that.

10 A. We asked her about the area, about the possibility of  
11 staying with her until we got situated and so forth.

12 Q. And then you stayed with her when you first got to  
13 Olympia?

14 A. That is correct.

15 Q. For how long have you -- you said you are cousins?

16 A. Yes.

17 Q. Where did the defendant grow up?

18 A. Philadelphia area.

19 Q. How close to you was that from where you grew up?

20 A. It was in the same area, same town, about 20 or 25 blocks.

21 Q. And what's -- if you are cousins, what's the actual  
22 relationship or the connection between the two of you?

23 A. Our mothers are sisters.

24 Q. Were you close growing up?

25 A. Yes. We spent holidays together, various summertime

1 parties, things like that.

2 Q. Did you go to the same schools or different schools?

3 A. We went to the same high school.

4 Q. Were you there at the same time?

5 A. For one year. I am older, so we overlapped for one year.

6 Q. Would you describe -- how would you describe your  
7 relationship growing up with her; were you close, distant?

8 A. We were close.

9 Q. When you lived in Colorado, did you ever receive a visit  
10 from the defendant?

11 A. Yes, she stopped by for the afternoon one day. She was  
12 traveling, and we had lunch.

13 Q. Than you moved to Olympia and moved in with her?

14 A. That's correct.

15 Q. And what time type of arrangement was she living?

16 A. It was a house, a rental house. Several roommates rented  
17 it. They were all Evergreen students.

18 Q. Did both you and your wife move in with her?

19 A. Basically, yeah, we stayed -- we stayed in the living  
20 room, basically.

21 Q. For how long do you think you lived there?

22 A. For two to three months.

23 Q. After that, where did you go?

24 A. I was able to rent a duplex, which is like half of a  
25 house, sort of an apartment, basically; a rental.

- 1 Q. What was the address of the house you rented?
- 2 A. 2411 Capitol Way, which is in Olympia.
- 3 Q. Did you live there for a number of years?
- 4 A. Yes, many years.
- 5 Q. Until roughly when?
- 6 A. Recently, November of '06, I think.
- 7 Q. Were you living there in 2001?
- 8 A. Absolutely.
- 9 Q. Now, I assume you and your wife lived there and your son
- 10 once he was born?
- 11 A. That's correct. My son was born in October of '98, and we
- 12 all lived in the house.
- 13 Q. Apart from the three of you, did anyone else live there?
- 14 A. Let's see, at one point Briana came to stay with us.
- 15 Q. Do you recall roughly when that was?
- 16 A. 2000, 2001.
- 17 Q. Do you recall for roughly how long she lived with you?
- 18 A. She lived with us on and off in 2000 and 2001. I would
- 19 say six months consistently.
- 20 Q. Where did she live in the house?
- 21 A. In the basement. It was a large basement, the size of the
- 22 whole floor plan of the house.
- 23 Q. Did you charge her rent to live with you?
- 24 A. No.
- 25 Q. Was there any arrangement that was in place of rent?

1   **A.** Well, the plan was she would help with child care and some  
2 of the kitchen chores and things like that.

3   **Q.** Did she help with that over time?

4   **A.** Sometimes.

5   **Q.** At the time that she was staying with you, was she dating  
6 or involved with anyone else?

7   **A.** Yes, her boyfriend Justin -- was Justin.

8   **Q.** Do you know his last name?

9   **A.** I have heard it recently, but I did not know it at the  
10 time.

11                   MR. FRIEDMAN: May the witness be shown Exhibit 115,  
12 which is already in evidence.

13   **A.** That's a picture of Justin as he looked at the time I met  
14 him.

15 BY MR. FRIEDMAN:

16   **Q.** At the time the defendant was living with you?

17   **A.** Yes.

18   **Q.** Apart from your wife, your son, and the defendant, did  
19 anyone else live at the house during those years you rented  
20 it?

21   **A.** No.

22   **Q.** Did the defendant have -- did you have a car when you  
23 lived there?

24   **A.** I did not own a car.

25   **Q.** Did the defendant have a car?

1 A. She did not own a car at the time.

2 Q. What about phones, what did you have in the house by way  
3 of phones?

4 A. We had one landline. The unit itself was a base unit with  
5 a hand set that would detach so you could carry it within a  
6 limit range.

7 Q. A cordless phone?

8 A. That's correct.

9 Q. Did either you or your wife have a cell phone?

10 A. No.

11 Q. Did the defendant have a cell phone?

12 A. No, she didn't.

13 Q. As a result, did she ever make phone calls from your  
14 house?

15 A. Very often, yes.

16 Q. And how did she do that?

17 A. She used our phone.

18 Q. I am going to ask you take a look at something marked 111,  
19 which has also been admitted.

20 A. Okay.

21 Q. Do you recognize that person?

22 A. Yes.

23 Q. How do you recognize it?

24 A. Let's see, we had -- Briana asked that we be gone from the  
25 house one night, that we should go out to dinner and not come

1 back before a certain time. When we came back, there was a  
2 meeting was ending, and he was one of the participants in that  
3 meeting.

4 Q. Did you speak to him after that meeting?

5 A. He might have said something on the way out, but I didn't  
6 have a conversation with him.

7 Q. Had you ever spoken to him at any other time? Did you  
8 know his name until you saw it on the screen?

9 A. No.

10 Q. Have you ever made a telephone call from your house to  
11 him?

12 A. No.

13 Q. Let me ask you to take a look at a document marked Exhibit  
14 122. This has not been admitted, so it should be in the  
15 folders to your left.

16 A. Okay. 122?

17 Q. Yes. It should be a photograph with the name of a person?

18 A. Yes.

19 Q. Can you tell us what the name is?

20 A. The name is Joseph Di bee.

21 Q. Do you recognize the person in that photograph?

22 A. I can't be sure. He -- I don't think I know him.

23 Q. Do you believe -- did you ever telephone him from your  
24 house?

25 A. No. No.



1 Q. By May of 2001, was the defendant still living at your  
2 house?

3 A. Her belongings were still there, including her clothes and  
4 furniture; but I hadn't seen her in some time.

5 Q. Did you understand that she was living somewhere else?

6 A. Yes. Yes, I did.

7 Q. Do you know where she was living?

8 A. I remember there was times when she would stay with her  
9 boyfriend Justin. I remember at one time she was staying with  
10 someone named Ocean and his family, but I am not sure -- I  
11 can't remember what she was doing at the time.

12 Q. You said she still had her belongings or some of her  
13 belongings in your basement?

14 A. Oh, yes, her clothes and her bed and all that sort of  
15 thing.

16 Q. Would you take a look at a document marked 777? That  
17 should also be in a folder in front of you. Tell me if you  
18 recognize that.

19 A. 777?

20 Q. Yes.

21 A. Yes, I am looking at this, and this is my calendar from  
22 May of 2001.

23 MR. FRIEDMAN: Government offers 777.

24 MR. BLOOM: I am going to object at this time. I  
25 don't mind --

1 THE COURT: Your objection is at this time --

2 MR. BLOOM: Yes, I would like an offer of proof as to  
3 why this is being offered at this time.

4 THE COURT: I don't want you to discuss it, but I  
5 will take it up at the break. Can we go on without this?

6 MR. FRIEDMAN: We will need it in a couple moments  
7 Your Honor. He can testify looking at it, but it basically  
8 allows --

9 THE COURT: Let him testify looking at it, but don't  
10 put it on the screen.

11 BY MR. FRIEDMAN:

12 Q. You said this is your calendar from 2001?

13 A. Yes.

14 Q. Is it fair to say it's one-page, with a block for each day  
15 in which people write notes?

16 A. Yes, that's right.

17 Q. Whose writing -- there's handwriting on here; is that  
18 correct?

19 A. That's correct.

20 Q. Who did most of the writing on here?

21 A. Mostly my wife Kara, it's her handwriting.

22 Q. Is some of the writing yours?

23 A. Some of it is mine, yes.

24 Q. And is there a phone number in the top left corner, a name  
25 and a phone number?

1 A. Yes.

2 Q. Whose name and phone number have you written down there?

3 A. Briana, it says Briana and then a phone number.

4 Q. Can you tell us the phone number?

5 A. Yes. 570-0226.

6 Q. Now, do you recall at some point during this month, do you  
7 recall receiving a telephone call from the defendant?

8 A. Yes. Yes, I did. It was basically she told me some  
9 current events in her life and that she was interested in  
10 renting a car.

11 Q. Do you recall when it was, roughly, that she called you?

12 A. The week of Monday, May 14, that week.

13 Q. Sometime during the week that began with Monday, May 14?

14 A. That's correct.

15 Q. You said there was discussion about a car?

16 MR. BLOOM: Excuse me, for just one moment. I want  
17 to put on the record I am objecting that he's looking at the  
18 document when he answers. I am allowed to put that on the  
19 record.

20 THE COURT: I told him to look at the document. I  
21 told him not to publish it to the jury. You will get a chance  
22 to ask your question.

23 MR. BLOOM: I am putting something on the record  
24 that's not otherwise on the record.

25 THE COURT: It's on the record.

1 MR. BLOOM: Now that I said it's on the record.

2 THE COURT: Mr. Bloom, should I send the jury out so  
3 we can discuss it further, or are you through?

4 MR. BLOOM: I think so. All I was doing was -- I  
5 have done it for 40 years, when something happens that's not  
6 on the record.

7 THE COURT: I don't care how long you've done it, but  
8 you are not in charge here. Are you through right now with  
9 this?

10 MR. BLOOM: The answer is yes.

11 THE COURT: Then you may be seated.

12 Ask the question.

13 MR. FRIEDMAN: Yes, Your Honor.

14 BY MR. FRIEDMAN:

15 Q. You mentioned some discussion about a car during this  
16 conversation. Tell us about that.

17 A. During that phone conversation, Briana mentioned several  
18 reasons that a rental car would be convenient on the upcoming  
19 weekend.

20 Q. Do you recall what those reasons were at the moment?

21 A. She gave me reasons at the time why it would be  
22 convenient, but I am not remembering it right now.

23 Q. Did any of those reasons relate to her belongings in the  
24 basement?

25 A. That came up during that same conversation.. I am not

1 remembering whether I brought it up like, hey, this would be  
2 good to take care of this, too; or if she offered at some  
3 point that might happen -- that she could move her belongings  
4 with the car as well.

5 Q. Was there any discussion about who was going to pay for  
6 this rental car?

7 A. Yes, there was. We discussed that in that same  
8 conversation. Basically we decided she would pay for some or  
9 all of the rental, depending on how things went.

10 Q. Now, you said you didn't have a car yourself?

11 A. That's correct.

12 Q. Did you have a driver's license at the time?

13 A. No.

14 Q. So who was going to rent this car?

15 A. Well, it would have to be my wife Kara using her credit  
16 card and her license.

17 Q. Would you take a look at Exhibit 772 and tell me if you  
18 recognize that?

19 A. Okay. 772?

20 Q. Yes.

21 A. Department of Licensing, I see my wife's name on the first  
22 page, and then there's a photocopy of her driver's license.

23 MR. FRIEDMAN: Government offers 772, if we could  
24 turn to the second page.

25 MR. BLOOM: What was the second thing you said?

1 MR. FRIEDMAN: Second page.

2 MR. BLOOM: No objection.

3 THE COURT: Admitted.

4 (Exhibit No. 772 admitted.)

5 BY MR. FRIEDMAN:

6 Q. That's your wife's driver's license and photograph?

7 A. Yes, that's correct.

8 Q. Do you recall discussing when this car rental was going to  
9 take place, when you were going to rent the car?

10 A. Let's see, our original plan was for Friday, but Briana  
11 did not show up; so got moved to Saturday.

12 Q. So the record is clear, Friday was what day in May?

13 A. Friday, the 18th of May, 2001.

14 Q. And you said it moved to the 19th, which would be what day  
15 of the week?

16 A. Saturday, the 19th.

17 Q. What happened on the 19th?

18 A. On the 19th, Kara did actually go ahead and rent the car.

19 Q. Was she alone, or had the defendant come to your house?

20 A. Let's see, I don't remember if Briana appeared at the  
21 house that day or where she met up with Kara before they went.

22 Q. Did they both return to your house with the car?

23 A. Yes.

24 Q. Would you look at Exhibit 775, which is admitted into  
25 evidence, so it should appear on your screen?

1   **A.**   775?

2   **Q.**   Do you recognize that?

3   **A.**   Yes, that's a white rental car, and I believe it's the  
4   same one.

5   **Q.**   For how long did you all or did your wife rent this car,  
6   do you know?

7   **A.**   Let's see, Saturday, Sunday, Monday -- so three days.

8   **Q.**   Once your wife and the defendant came back with the car,  
9   do you remember doing anything with the car?

10           MR. BLOOM: Excuse me, I am going to object. I am  
11   not sure there was clear testimony that they came back  
12   together.

13           THE COURT: All right. Ask the question again.

14           MR. BLOOM: I would object to the phrasing.

15   BY MR. FRIEDMAN:

16   **Q.**   Did your wife and the defendant come back to your house  
17   with the car?

18   **A.**   Yes, I was at home, and Briana and my wife pulled up into  
19   the driveway in the white rental car.

20   **Q.**   Do you recall doing anything with the car that day?

21   **A.**   Let's see, I know we drove about a bit with the car, just  
22   to go to a restaurant, things like that.

23   **Q.**   You had a young child. Did you have to do anything?

24   **A.**   Oh, yes. I had to -- he uses a car seat. He was a baby  
25   at the time, so I had a car seat I had to put in the car.

1 Q. Do you recall the defendant coming to your house the next  
2 day, that is May 20?

3 A. Yes, on Sunday.

4 Q. Tell us about that.

5 A. Briana was at our house. She was at the house, it was the  
6 afternoon, and before long she began to complain of abdominal  
7 pains. And eventually she said she thought she should go to  
8 the emergency room.

9 Q. Could you see any sign that she was actually in pain?

10 A. No, I could not. She told me just with words that she was  
11 having abdominal pains.

12 Q. Did you discuss how she would get to the emergency room?

13 A. She suggested that she wanted to be driven there, and that  
14 Justin could drive her, her boyfriend Justin.

15 Q. Was he there?

16 A. He was not there at the time.

17 Q. Did she say anything about that at the time?

18 A. She said he was nearby at a friend's house but without his  
19 car, and that he could come over and drive her in the rental  
20 car to the emergency room.

21 Q. Did he come to your house after that?

22 A. Yes, he appeared on foot. And after some preparation,  
23 they drove off in the rental car.

24 Q. Did they rush off to the emergency room, or were they at  
25 your house for some time?



1   **A.** They were at my house preparing for some time.

2   **Q.** Now, did you have an understanding as to which emergency  
3 room they were headed to?

4   **A.** Since she was in pain, it was my assumption that they  
5 would go to one of the Olympia hospitals and use the emergency  
6 room. That was my assumption.

7   **Q.** How many hospitals -- how many emergency rooms are there  
8 in Olympia?

9   **A.** There's two.

10   **Q.** Roughly what time of day did they leave your house?

11   **A.** Late afternoon, early evening.

12   **Q.** After they left, did you notice anything missing from your  
13 house?

14   **A.** Yes, the hand set for my phone was gone.

15   **Q.** Did you try to find it?

16   **A.** Yes, I did. I looked throughout the house and also used  
17 the pager function on the base unit, which causes it to beep  
18 if you can't locate it. But there was no beep. I searched  
19 the house, it wasn't there.

20   **Q.** Did you ever -- did the defendant come back that evening?

21   **A.** No. I stayed up late, but she never came back until the  
22 following day.

23   **Q.** Were you concerned about what was going on?

24   **A.** Yes, I was for several reasons.

25   **Q.** Why were you concerned?

1 A. Well, for one thing, she said she was in pain, going to  
2 emergency room. Didn't return. They had the rental car. I  
3 didn't know what the status of that was and so forth.

4 Q. Did you try and call the hospital or check?

5 A. I couldn't. I didn't have the phone.

6 Q. Eventually you went to bed?

7 A. That's correct.

8 Q. When you woke up, had the defendant come back to your  
9 house?

10 A. No, she did not return in the morning.

11 Q. Was there any message telling you anything about what had  
12 happened?

13 A. No.

14 Q. Did you continue to be concerned?

15 A. Yes, I was concerned.

16 Q. At some point, did she reappear at your house?

17 A. Yes, she reappeared in the late afternoon on Sunday.

18 Q. I thought you said she had taken the car --

19 MR. BLOOM: Objection, leading.

20 THE COURT: Ask the question.

21 BY MR. FRIEDMAN:

22 Q. On what day did she reappear?

23 A. I meant Monday.

24 Q. Was she with the car? Did she reappear with the car?

25 A. Yes, that's correct.

1 Q. Was anyone with her?

2 A. Justin may have been with her, but he didn't come in. He  
3 might have been there.

4 Q. If he was there, for how long was he there?

5 A. Just for a moment.

6 Q. Did she say anything about where she had been?

7 A. She said -- she gave reasons that she could not gain  
8 access to the Olympia emergency rooms and that they had to go  
9 all the way to Seattle for the emergency room.

10 Q. Do you recall why it was that she said she couldn't get  
11 into an emergency room in Olympia?

12 A. She gave me reasons at the time, but I can't remember what  
13 they were.

14 Q. Do you recall what she said actually happened in Seattle?

15 A. To the best of my memory, the basic story was she made it  
16 to the emergency room in Seattle, was in pain. There was a  
17 wait, and eventually the pain subsided in the middle of the  
18 night and she came back.

19 Q. Did she produce anything for which you had been looking?

20 A. And she had the phone. She gave me the phone back and  
21 said, "sorry". She apologized and made a joke that I was  
22 probably mad that the phone was gone.

23 Q. Had she ever taken the phone with her before when she left  
24 the house?

25 A. No. She would take it to other rooms of the house, but

1 not away.

2 Q. After returning the phone and telling you that she'd been  
3 to Seattle, what did the defendant do?

4 A. She went downstairs and went to sleep.

5 Q. What happened to the car?

6 A. We took it back to the rental place and dropped it off.

7 Q. Was the rental place open when you got there?

8 A. I remember dropping it off. I don't remember seeing any  
9 personnel. They must have had some sort of drop or something.

10 Q. Did you or the defendant ever use the car to move any of  
11 her belongings that were still in your basement?

12 A. No.

13 Q. Do you recall any discussion about damage to the car?

14 A. Yes. When the car was returned on Monday afternoon,  
15 Briana asked me to take a look at the side of the car and see  
16 if I could see any damage.

17 Q. What did you see?

18 A. I couldn't see any damage.

19 Q. You have a note on your calendar --

20 A. Yes.

21 Q. -- approximately a week later; what does that note say?

22 A. It says --

23 MR. BLOOM: I object.

24 THE COURT: Whose note is it? Are you asking him did  
25 he write the note; is that the question?

1 MR. FRIEDMAN: It's either him or his wife. I was  
2 asking him what the note was on his calendar.

3 MR. BLOOM: I can resolve this. I withdraw my  
4 objection to the offer of the calendar, so let it all.

5 THE COURT: All right. Then admit the document, put  
6 it on the screen.

7 (Exhibit No. 777 admitted.)

8 BY MR. FRIEDMAN:

9 Q. Mr. Corrina, do you see your calendar on the screen now?

10 A. Yes.

11 Q. There's a note on the 28th of May, so a week after the car  
12 was returned?

13 A. Yes.

14 Q. What does that note say?

15 A. It says "call budget," yes.

16 Q. Do you know why that note is on the calendar?

17 A. Because we knew how much the rental would cost, but I was  
18 calling to find out if there was any additional cost for  
19 damages.

20 Q. Did you learn whether there was in fact any additional  
21 charge for damages?

22 A. There was no additional charge.

23 Q. Would you take a look at document 773? Tell me if you  
24 recognize that.

25 A. 773?

1 Q. Yes.

2 A. The first page is a certification. The second page, this  
3 was our Discover Card. This is a Discover Card statement.

4 Q. For May of 2001?

5 A. Correct.

6 MR. FRIEDMAN: The government offers 773.

7 MR. BLOOM: No objection.

8 THE COURT: Admitted.

9 (Exhibit No. 773 admitted.)

10 BY MR. FRIEDMAN:

11 Q. If we could blow up the middle portion. The name up at  
12 the top, can you tell us whose name this account is held in?

13 A. K.R. Collins, that was my name. That's my name I was born  
14 with until I changed it.

15 Q. Why did you change your name from Collins to Corrina?

16 A. We were going to have a new family, a new baby. We  
17 decided we should have a new family name.

18 Q. And your son uses that name, I take it?

19 A. That's correct.

20 Q. Your wife didn't quite change?

21 A. She actually retained her maiden name after all.

22 Q. If we could blow up the transactions portion. Do you see  
23 a transaction there that starts with -- in the gas/automotive  
24 section?

25 A. Gas/automotive, yes.

1 Q. Tell us which company charged that and what the charge  
2 was?

3 A. Budget, the charge s\$187.87.

4 Q. What was that charge for?

5 A. That charge was for the rental car for three days.

6 Q. And then, did you ever receive payment for renting that  
7 car?

8 A. Yes. Yes, I did.

9 Q. Who paid you?

10 A. Briana.

11 Q. How much did she pay you?

12 A. \$200 in cash.

13 Q. Have you looked at your bank records for 2001?

14 A. Yes, I have.

15 Q. Would you look at Exhibit 774 and tell me if you recognize  
16 those?

17 A. 774?

18 Q. Yes.

19 A. These are our financial records from Key Bank for 2001.

20 MR. FRIEDMAN: The government offers 774.

21 MR. BLOOM: No objection.

22 THE COURT: Admitted.

23 (Exhibit No. 774 admitted.)

24 BY MR. FRIEDMAN:

25 Q. If we turn to page 17 of those, this will show up on the

1 screen and probably make your life easier.

2 Do you see a section now blown up on the screen labeled  
3 "Deposits"?

4 A. Yes.

5 Q. Do you see a transaction that took place on May 29?

6 A. 29th? Yes.

7 Q. What is that transaction, what happened that day?

8 A. A \$400 deposit.

9 Q. If we turn to page 49 of those records. Do you recognize  
10 the documents on that page?

11 A. Yes, I do. There's a check from my mother-in-law and a  
12 cash deposit with my handwriting on it.

13 Q. How much is the check from your mother-in-law?

14 A. That's for \$200.

15 Q. And then how much cash was deposited that day?

16 A. \$200 in cash.

17 Q. What was the source of that cash?

18 A. That was the cash that Briana gave me for the rental car.

19 Q. Have you looked through your bank records for the first 8  
20 months of that year?

21 A. Yes, I have.

22 Q. Is there any other cash deposit that you make -- made to  
23 that account any time during that eight-month period?

24 A. No.

25 Q. Sometime after that weekend, did the defendant move away



1 from Olympia?

2 A. She told me that she did.

3 Q. Roughly when was that?

4 A. Boy, let's see, it's hard to remember for sure.

5 Q. Still in 2001?

6 A. Correct.

7 Q. Do you recall an episode that took place while -- did she  
8 come get her belongings from your house before she moved out?

9 A. Eventually.

10 Q. Was she alone or with someone?

11 A. Justin was helping her pack.

12 Q. Do you recall any conversation you had with him or  
13 overheard him?

14 A. I overheard them talking and --

15 MR. BLOOM: I object to that, please, hearsay.

16 THE COURT: Well, let's find out who said what.

17 A. We were all loading her clothes and things into the car,  
18 and they were talking while we were doing this, Justin and  
19 Briana.

20 BY MR. FRIEDMAN:

21 Q. And what did he say to her?

22 A. He said that he --

23 MR. BLOOM: Objection.

24 MR. FRIEDMAN: It's a coconspirator statement.

25 THE COURT: Overruled.

1 A. He said he was going to change his appearance.

2 BY MR. FRIEDMAN:

3 Q. Did he give any details about how he was going to change  
4 his appearance?

5 A. Yeah, he said he was going to change his hair.

6 Q. Do you recall any more details than that?

7 A. No, he was discussing -- he was bringing up various ways  
8 he could change his appearance. He said he was going to  
9 change his hair.

10 Q. Did you have an understanding of why he was going to  
11 change his hair?

12 MR. BLOOM: Objection.

13 THE COURT: If he knows -- I don't know how he might  
14 know this. Make your question a little more direct.

15 BY MR. FRIEDMAN:

16 Q. Did you understand from the context, and from his tone,  
17 did you have an understanding of what he meant and why he was  
18 going to do that?

19 A. He didn't say specifically, but the context was a legal  
20 problem.

21 MR. BLOOM: Objection -- I withdraw the objection.

22 MR. FRIEDMAN: May I have a moment?

23 BY MR. FRIEDMAN:

24 Q. Would you look again at Exhibit 115?

25 A. Yes.

1 Q. Is that how he looked this day when he was helping the  
2 defendant move out of your house?

3 A. That's correct.

4 Q. Then would you look at 115-A, which I believe has been  
5 admitted into evidence. Did you subsequently see -- sometime  
6 after that day, did you see Justin Solondz in Olympia?

7 A. Sometime thereafter I did see him in Olympia and spoke  
8 with him, and that was his appearance at that time. So he had  
9 changed it.

10 Q. He basically looked as he does in 115-A?

11 A. Exactly as that, yes.

12 Q. Now, do you know where the defendant moved after she left  
13 Olympia?

14 A. She told me that she was moving to California.

15 Q. Did you ever get a call from her after she moved to  
16 California -- do you recall getting a call from her after she  
17 moved to California?

18 A. Yes, I did.

19 Q. What had you been doing when she called you?

20 A. I had been working on my computer and listening to the  
21 radio.

22 Q. Did you hear anything on the radio that you found  
23 interesting?

24 A. Yeah, there was a strange Crime Stoppers segment, and I  
25 mentioned it to her on the phone.

1 Q. What was that Crime Stopper segment about? Tell us first,  
2 what's Crime Stoppers?

3 MR. BLOOM: Objection, please.

4 THE COURT: Are we getting into --

5 MR. FRIEDMAN: This is an entirely different  
6 conversation five years earlier.

7 THE COURT: It may be, but the way it is coming about  
8 is concerning here.

9 MR. FRIEDMAN: The conversation they have --

10 THE COURT: I don't want you to explain it here in  
11 front of the jury. I am having problems in terms of the  
12 admissibility of this. So if you have another line of  
13 questioning, let's go to something; or if they need to be sent  
14 back before we go any further, then I say move on to your next  
15 line of questioning.

16 MR. FRIEDMAN: Your Honor, if we end up taking the  
17 break before coming back, is it okay to raise this in  
18 redirect?

19 THE COURT: I will hear whatever you have to say to  
20 me at the break. I just don't want to hear it now.

21 BY MR. FRIEDMAN:

22 Q. Do you recall, over the course of the last year or so,  
23 you've been interviewed a number of times; is that correct?

24 A. Yes, that's correct.

25 Q. Was the first time you had any contact with the government

1 once when Agent Halla came to your house?

2 A. That's correct.

3 Q. In May of 2006?

4 A. Yes.

5 MR. BLOOM: Excuse me, I am going to ask that the  
6 leading stop, in terms of who came and when they came. I ask  
7 him please, what happened, who came.

8 THE COURT: Question.

9 BY MR. FRIEDMAN:

10 Q. What did Agent Halla say when he came to your house?

11 A. He showed me a series of pictures, including Briana's  
12 picture. And asked if I knew any of these people. I said,  
13 "No, I didn't."

14 Q. Did you in fact recognize her picture?

15 A. Yes, I did.

16 Q. Why did you say you didn't know her?

17 A. I thought I could protect her, and I thought I could get  
18 them to go away.

19 Q. Did he in fact go away?

20 A. That day, but I saw him again later.

21 Q. Did he come back in October of 2006?

22 A. Yes, that's correct.

23 Q. Did he interview you again?

24 A. That's correct.

25 Q. What do you recall him asking you? That time did you tell

1 him you knew the defendant?

2 A. Yes, I did. And I was asked a series of questions, which  
3 I answered.

4 Q. In particular, were you asked any questions about whether  
5 you had rented a car for the defendant?

6 A. Yes, I was.

7 Q. What did you say?

8 A. I said, "No, I hadn't."

9 Q. Why did you say that?

10 A. At the time I had forgotten about the whole thing with the  
11 rental car.

12 Q. You actually were subpoenaed to the Grand Jury and  
13 testified about a month after that; is that correct?

14 A. Yes.

15 MR. BLOOM: Objection, leading.

16 THE COURT: This is not so leading that you can't  
17 take care of it in cross-examination. If he appeared before  
18 the Grand Jury, let him answer the question.

19 MR. BLOOM: Why can't he say what happened, rather  
20 than say -- he can't give him the answer.

21 THE COURT: Your exception is noted.

22 BY MR. FRIEDMAN:

23 Q. When you testified before the Grand Jury, were you asked  
24 whether you rented a car for the defendant?

25 A. Yes.

1 Q. What did you say?

2 A. Ultimately, I said no, I had not rented a car. I had  
3 still not remembered the incident with the car.

4 Q. In January 2007, did you learn that Agent Halla --

5 MR. BLOOM: Objection, leading. He's about to give  
6 him the facts.

7 THE COURT: See if you can ask the question so  
8 Mr. Bloom will be satisfied. See if you can ask the question  
9 and he can fill in the times and dates.

10 BY MR. FRIEDMAN:

11 Q. Did you subsequently learn that Agent Halla had contacted  
12 your wife?

13 A. Yes, I got a phone call from my wife Kara.

14 THE COURT: Then you can ask him when.

15 BY MR. FRIEDMAN:

16 Q. Roughly, when did that happen?

17 A. Beginning of, just prior to January 2007.

18 Q. What did you learn about that, why Agent Halla had  
19 contacted your wife?

20 A. She said there were documents about a rental car in May of  
21 2001 that she had seen. And they asked what these -- she was  
22 asked what these were.

23 MR. BLOOM: Excuse me, this is the wife speaking.

24 THE COURT: He's talking about the wife. Will she be  
25 testifying?

1 MR. FRIEDMAN: She will not be testifying.

2 MR. BLOOM: She will not be testifying.

3 MR. FRIEDMAN: We can move on.

4 MR. BLOOM: I am sorry, did you say she will not be  
5 testifying?

6 THE COURT: I think that was the answer.

7 MR. BLOOM: All right.

8 BY MR. FRIEDMAN:

9 Q. So you learned there had been a meeting?

10 A. Yes.

11 Q. What -- did you reach any decision after that  
12 conversation?

13 A. Yes. I decided to hire a lawyer, and I also resolved to  
14 look at my notes from this time period and see if I could  
15 figure out why there was -- more about these documents.

16 Q. Did you look at your notes and remember anything?

17 A. Yes, I did. I looked over my notes and thought about what  
18 my wife told me about the documents, then I remembered the  
19 rental car in May of 2001.

20 Q. What did you do once you remembered that?

21 A. Let's see, I spoke to my lawyer about it. Later he  
22 arranged a meeting so I could explain, so I could explain what  
23 had happened.

24 Q. With whom did you meet?

25 A. The government.



1 Q. Did you explain what had happened?

2 A. Yes, I did.

3 Q. What did you explain?

4 A. I explained that --

5 MR. BLOOM: Objection.

6 THE COURT: He can say what he said.

7 MR. BLOOM: I am sorry?

8 THE COURT: Are you asking him what did he say to  
9 them, was that the question, Mr. Friedman?

10 MR. BLOOM: Withdraw the objection.

11 THE COURT: You may answer, sir.

12 A. Basically what I said to the Grand Jury was before I had  
13 remembered the rental car. And now that I remembered it, I  
14 was ready to explain these documents, that there was a rental  
15 car in 2001.

16 BY MR. FRIEDMAN:

17 Q. At any time prior to that meeting, did anyone from the  
18 government ever threaten to prosecute you for the statements  
19 you'd made before?

20 A. No.

21 Q. Prior to or during that meeting, had you ever been  
22 promised that you won't be prosecuted, given what you've said  
23 now?

24 A. No.

25 Q. Is it difficult for you to be testifying here today?

1 A. Yes, it is.

2 Q. Why is that?

3 A. It's hard to explain. It's very stressful. It's very  
4 stressful. This is causing problems with my extended family.

5 MR. FRIEDMAN: Thank you, Mr. Corrina. I have no  
6 further questions.

7 MR. BLOOM: May we take a break because I really need  
8 to bring something up to the Court based on some of the  
9 testimony? Maybe we can take five minutes so we can address  
10 that.

11 THE COURT: Can you go on at this point, to  
12 cross-examination?

13 MR. BLOOM: It's something I would want to bring up  
14 at the beginning of my examination.

15 THE COURT: Let me have you folks step out for a  
16 moment. Leave your notes on the chair.

17 (Jury not present.)

18 MR. BLOOM: May I ask that the witness be excused,  
19 too?

20 THE COURT: I thought you had something to ask him?

21 MR. BLOOM: No, I want to address the Court, but I  
22 don't want to do it in the presence of the witness.

23 THE COURT: Let me have you step down. We have a  
24 witness room. I will have you step outside the courtroom.  
25 Have them show you where that is.

1 (Robert Corrina left the courtroom.)

2 THE COURT: All right. Mr. Bloom?

3 MR. BLOOM: Yes, the ruling the Court made a little  
4 while ago, that we can't go into Ms. Waters' call, forget the  
5 "I'm innocent" part, I do think that should be clear, the rule  
6 of completeness should be there. But the key is here, he was  
7 told by Ms. Waters, "tell the truth." Again, forget that "I'm  
8 innocent, tell the truth, tell the truth." What he's  
9 testified to here now completely skews the circumstance. He's  
10 testified that he didn't identify her picture because he  
11 wanted to protect her. It created completely 180 degrees from  
12 the reality here, that she has said to him, "I'm innocent."  
13 In fact, there's nothing to protect me from, "Don't worry  
14 about it, tell them the truth, tell them the truth."

15 Now he has said, "I didn't identify her. I didn't tell  
16 the truth because I was trying to protect her." I hope the  
17 Court sees that that's a real problem that has created.

18 So I am asking the Court to reconsider, given the  
19 testimony, that we really should be able to bring out that she  
20 said to him, it can be modified to "Don't worry about  
21 anything, tell the truth."

22 But the fact that she said to him, "tell the truth," and  
23 he has now told the jury he was trying to protect her is a  
24 real problem, and I ask the Court to think about it.

25 MR. FRIEDMAN: Your Honor, there is no suggestion

1 that he was trying to protect her because she asked. There's  
2 no suggestion of that. It's just that he wanted to do that.

3 So she can testify on direct as to what she said. But  
4 there is no suggestion. The door hasn't been opened to that.  
5 There's no inference that will hurt them in front of the jury.  
6 They can cross and say -- and basically make it clear it's  
7 because he wanted to do it himself, not because he was asked  
8 to protect her.

9 So there's no need for this statement. The statement is  
10 hearsay and incredibly prejudicial for her -- as the Court  
11 said -- for her to get to testify --

12 THE COURT: My ruling is the same because of the  
13 reasons I stated before. I see no reason to do that. But you  
14 are entitled to ask him, what made him -- as long as it  
15 doesn't get into this issue that I ruled on -- as to why he  
16 felt his responsibility to protect her.

17 MR. BLOOM: That's the opposite direction. He's  
18 going to say -- suggesting she was guilty. In fact, she says:  
19 I am not guilty. Tell them anything. Tell them the truth.  
20 And the whole impression, if that cross-examination goes in  
21 the direction you and the prosecution suggest, it's exactly  
22 the opposite.

23 THE COURT: Let me say this --

24 MR. BLOOM: He reenforces he's trying to protect her.

25 THE COURT: You raised a question. You raised it

1 twice. I have ruled on it two or three times. My ruling is  
2 the same. You've made your exception to my ruling.

3 You have a right, of course, to take it anywhere you take  
4 it in terms of an appeal or whatever you think I have done  
5 incorrectly here.

6 As I see it -- I don't see it the same way you see it. So  
7 my ruling will stand. All I can ask of you is this: I am not  
8 asking you to like my ruling, but I am asking you to accept it  
9 and move on. That's what I am asking of you right now.

10 MR. BLOOM: I do. I am entitled to ask the Court to  
11 reconsider it. I have done that. You've denied it. Let's  
12 move on.

13 THE COURT: Bring in the jury.

14 (Jury present.)

15 THE COURT: You may be seated. Cross-examination?

16 CROSS-EXAMINATION

17 BY MR. BLOOM:

18 Q. Mr. Corrina, my name is Robert Bloom. I am one of the  
19 lawyers for Briana Waters. Have you and I ever spoken?

20 A. No.

21 Q. Has it been communicated to you on several occasions that  
22 I would like to speak to you?

23 A. Yes.

24 Q. And each case you said no; is that correct?

25 A. That's correct.

1 Q. Is your lawyer here in this courtroom?

2 A. No.

3 Q. Is that Mr. Zulauf?

4 A. Mr. Zulauf.

5 Q. Did he communicate to you that I would like to speak to  
6 you and to Kara?

7 A. Yes.

8 Q. Did he do that at least twice?

9 A. Yes.

10 Q. You chose not to speak to me; is that correct?

11 A. That's correct.

12 Q. There's nothing I can do for you, right?

13 A. I don't understand your question.

14 Q. These guys sitting here at this table, they hold you and  
15 your freedom in their hands, do they not?

16 A. That is not correct.

17 Q. You lied to a federal agent, Agent Halla, when he showed  
18 you Briana's picture and you said "I don't recognize her," did  
19 you not?

20 A. I already said that, yes.

21 Q. That's what you said, and that's what you did; you lied to  
22 the man right in his face, right?

23 A. I answered that three times, yes.

24 Q. Would you please answer my question? You did that -- did  
25 you come to learn that lying to a federal investigator is a

1 felony?

2 A. How would I come to learn that?

3 Q. Do you have a lawyer?

4 A. Yes.

5 Q. Did he tell you that?

6 A. We did not discuss that.

7 Q. Did your wife speak, that is Kara, did she speak at one  
8 point in January of 2007, a little over a year ago, with  
9 Mr. Friedman and Mr. Halla when you were not present?

10 A. That correct.

11 Q. Did she tell you that they had threatened you and her with  
12 going to prison?

13 A. Would you please repeat the question?

14 Q. Did she tell you that they, Mr. Friedman and Mr. Halla,  
15 had threatened her and you with going to prison?

16 A. No.

17 Q. Did you have a discussion with her as to what took  
18 place -- let me withdraw that.

19 Did you come to learn there was a meeting between your  
20 wife, Mr. Friedman and Mr. Halla, in January, a year ago,  
21 2007?

22 A. The answer is yes.

23 Q. When she got through with that meeting, did she come and  
24 talk to you about what had happened at that meeting?

25 A. Yes, she talked to me about that.

1 Q. Did she tell you that Mr. Friedman had told her that  
2 because of her testimony and your testimony in the Grand Jury,  
3 the Grand Jury might want to indict you for perjury?

4 A. Kara was upset, but I was not at that meeting. I don't  
5 know exactly what was said.

6 Q. No, sir, my question is: Did she tell you that that's  
7 what they told her at that meeting?

8 A. I don't understand the question. You are going to have to  
9 repeat it.

10 Q. Let me ask it again. You knew she was going to a meeting  
11 with Mr. Friedman and Mr. Halla; is that correct?

12 A. I heard about it later.

13 Q. Okay. You didn't know before that she was going to meet  
14 with them?

15 A. She tried to call me, but I was not at home.

16 Q. By the way, did there come a time that she told you there  
17 was one event where the FBI came to her place of work?

18 A. This is the same thing we've been talking about. That's  
19 the meeting.

20 Q. Did she tell you that at the place of work, they yelled at  
21 her?

22 A. Yes, she did.

23 Q. And who did she tell you had yelled at her?

24 A. Andrew Friedman.

25 Q. This man right here?



1   **A.** That's correct.

2   **Q.** Did she tell you what it was he yelled about?

3   **A.** About the discrepancy between the documents and the Grand  
4 Jury testimony.

5   **Q.** Did she tell you in reporting that meeting that took place  
6 in January of '07, that Mr. Friedman had threatened that the  
7 Grand Jury might want to indict her and you for the crime of  
8 perjury?

9   **A.** I believe she asked if she was going to be charged with  
10 perjury.

11   **Q.** Did Mr. Friedman, according to what she told you, answer  
12 that the Grand Jury may be considering that; words to that  
13 effect?

14   **A.** I don't know.

15   **Q.** You got a lawyer soon after that, right?

16   **A.** That's correct.

17   **Q.** And you got a lawyer because you were scared, right?

18   **A.** I got a lawyer because I thought we were done with this  
19 situation but new documents had come to light.

20   **Q.** Did you get a lawyer because you were scared?

21   **A.** I got a lawyer because you need a lawyer when dealing with  
22 legal matters.

23   **Q.** Did you get a lawyer because you were scared?

24   **A.** No.

25   **Q.** Briana's brother, Eric, you know him, right?

1 **A.** Correct.

2 **Q.** Did he send you an e-mail where he said you should get a  
3 lawyer, way back, way back before this all happened, after you  
4 had -- or even before you had been shown a picture that you  
5 have a right to a lawyer, if you can't afford a lawyer you  
6 should ask the authorities to appoint a lawyer; did you get an  
7 e-mail from Eric Waters telling you that?

8 **A.** I don't remember.

9 **Q.** The things you do remember are from now about seven years  
10 ago, right; May of '01, close to seven years ago?

11 **A.** That's correct.

12 **Q.** But I was just asking you something that you remember may  
13 have happened about two years ago, correct?

14 **A.** I don't know.

15 **Q.** Well, the first approach by Agent Halla, when he showed  
16 you the photographs, when was that?

17 **A.** Let's see, I first saw Agent Halla in 2006.

18 **Q.** What month?

19 **A.** It was fall of 2006.

20 **Q.** And what month in the fall of 2006?

21 **A.** I can't remember right now.

22 **Q.** You have testified under the questioning of Mr. Friedman  
23 that you remember Thursday, Friday, Saturday, Sunday on a  
24 particular weekend. You have particular memories of certain  
25 things that happened on certain days of the week, seven years

1 ago. Do you remember that testimony this afternoon?

2 A. I pieced those dates together from the documents I was  
3 shown, not because I remembered what day it was when certain  
4 things happened.

5 Q. Let me get back to that later.

6 May of 2001, did you have a job?

7 A. May of 2001, yes, I had a job.

8 Q. What was that job?

9 A. Computer specialist.

10 Q. For whom did you work?

11 A. Patrick Townsend and Associates.

12 Q. Patrick Townsend and Associates?

13 A. That's in Olympia, Washington.

14 Q. Where about in Olympia?

15 A. An area of Olympia, to the north, called Boston Harbor.

16 Q. Is that about nine miles from your home?

17 A. That's correct.

18 Q. Capitol Way?

19 A. That's correct.

20 Q. And when did you get that job?

21 A. Summer, let's see, summer of 2000.

22 Q. And how many days a week did you work?

23 A. Five days a week.

24 Q. What were your hours?

25 A. Let's see, 8:00 to 5:00.

- 1 Q. 8:00 in the morning to 5:00 in the evening?
- 2 A. That's correct.
- 3 Q. Now, there came a time when after your child was born --
- 4 what is your child's name?
- 5 A. Xie Corrina.
- 6 Q. How would you spell that?
- 7 A. First name X-I-E, last name C-O-R-R-I-N-A.
- 8 Q. And he was born in 1998?
- 9 A. That's correct.
- 10 Q. And there came some times -- I assume you loved him very
- 11 much then and love him very much now?
- 12 A. Of course.
- 13 Q. He's your treasure?
- 14 A. Yes.
- 15 Q. This treasure, probably the most valuable wonderful thing
- 16 in your life, right -- you entrusted this woman, your cousin,
- 17 Briana Waters, to stay with your treasure, the treasure of
- 18 your life; you trusted her, is that right?
- 19 A. That's correct.
- 20 Q. That's what you thought of your cousin; is that correct?
- 21 A. That's correct.
- 22 Q. Now, was there a time when you had a driver's license?
- 23 A. Yes.
- 24 Q. When was the last time you had a driver's license?
- 25 A. '95, I would say 1995.

1 Q. How come -- what happened so that you did not any longer  
2 have a license?

3 A. It was -- the license I had was about to expire.

4 Q. Yes.

5 A. I went to the Department of Motor Vehicles in Colorado to  
6 get a new ID. At the time I did not own a car or have access  
7 to a car. I got up to the counter, and I had about five  
8 dollars, it was enough for an ID but not enough for a license,  
9 which would have been a lot more.

10 So I needed an ID, right away for something, either a job  
11 interview or something; so I got the ID.

12 Q. And that was in 1995?

13 A. Correct.

14 Q. And the day after that, or a week after that or three  
15 weeks after that, did you go down to the Colorado Department  
16 of Motor Vehicles and get a driver's license?

17 A. No, I did not.

18 Q. So for now 13 years you've decided that you don't need a  
19 driver's license?

20 A. Basically.

21 Q. You didn't have any problem that led to the license being  
22 revoked or suspended, did you?

23 A. Oh, no.

24 Q. Now, when was it that you changed your name?

25 A. Just before the birth of my son; so I would say '98.

1 Q. You changed your name why?

2 A. My son was about to be born. We were going to change our  
3 names to a new family name.

4 Q. Was it in any way related to the relationship you had with  
5 other members of your family when you decided to change your  
6 name?

7 A. No.

8 Q. Now, let's go to the day you say was in the fall of 2006,  
9 when Agent Halla came and showed you some photographs. Did he  
10 come alone or was he with someone else?

11 A. There was another agent with Agent Halla.

12 Q. Do you remember the name?

13 A. I don't know his name.

14 Q. Do you remember hearing his name?

15 A. He may have introduced himself, but I don't remember his  
16 name.

17 Q. So he showed you a picture of your cousin; is that right?

18 A. That's correct.

19 Q. What location was this?

20 A. In front of my house.

21 Q. It was you and the two agents, correct?

22 A. Correct.

23 Q. They identified themselves?

24 A. That's correct.

25 Q. Were they polite to you?

1     **A.**   I think so, yes.

2     **Q.**   How long did they spend with you?

3     **A.**   A few minutes.

4     **Q.**   How many?

5     **A.**   Ten.

6     **Q.**   Okay. How many pictures did they show you?

7     **A.**   Five or six.

8     **Q.**   Were they all Briana?

9     **A.**   No.

10    **Q.**   Do you know who any of the other people were?

11    **A.**   No.

12    **Q.**   Now, by the way, were you expecting to see the FBI, or was  
13    this a surprise?

14    **A.**   I am not sure. I knew Briana was in trouble. I didn't  
15    know if I would see agents or not.

16    **Q.**   How did you know she was in trouble?

17    **A.**   Let's see, I had heard from my parents that she was in  
18    trouble. And I also had a phone call from Briana herself  
19    saying she was in trouble.

20    **Q.**   Did she say that you should lie for her?

21                 MR. FRIEDMAN: Objection, Your Honor, the Court has  
22    already addressed this issue.

23                 THE COURT: Do not go into the area that I have ruled  
24    on.

25                 MR. BLOOM: I won't.

1 THE COURT: Okay.

2 BY MR. BLOOM:

3 Q. Did she say that you should lie for her?

4 A. No, she did not.

5 Q. Whatever it was, she said some other things, but she  
6 didn't say you should lie, right?

7 A. No, she did not say that.

8 Q. Now, you looked at the picture, and it's clearly Briana  
9 Waters, correct?

10 A. Correct.

11 Q. No mistake in your mind, right?

12 A. No.

13 Q. You stood there in the face of two FBI agents and you made  
14 a decision that you were going to lie to them; is that  
15 correct?

16 A. I thought I could protect Briana.

17 Q. Sir, please answer my question. You made a decision --  
18 let me withdraw that.

19 Protect her from what? You hadn't seen her do anything.  
20 She hadn't told you she had done anything. You came to know  
21 that she was accused of something, right?

22 A. Correct.

23 MR. BLOOM: Judge, I ask you to reconsider your  
24 decision --

25 THE COURT: Denied.



1 MR. BLOOM: -- at this point.

2 THE COURT: There's no sense in keep bringing this  
3 up, Mr. Bloom. Just keep going.

4 BY MR. BLOOM:

5 Q. My question now is, you made a decision to protect her, to  
6 root for the Yankees, to root for the Red Sox, whatever your  
7 reason is, you made a decision to lie to Agent Halla; is that  
8 correct?

9 A. You make it sound like it's logical. But when you are  
10 going to protect your family, you are not logical, you just do  
11 it.

12 Q. My question, sir, is: You made a decision that you were  
13 going to lie to this guy, these two guys, these two FBI  
14 agents? You said to yourself, here's a picture of Briana, I  
15 am going to deny that I know this person; is that what you  
16 said to yourself?

17 A. No.

18 Q. It just came out of your mouth, right?

19 A. No, I said I could make them go away. I thought I could  
20 make them go away.

21 Q. That's not my question. My question is: Whatever your  
22 reason was, you made the decision I am going to tell a lie?

23 A. I wouldn't describe it that way, no.

24 Q. It was a lie, was it not?

25 A. Yes, it was.

1 Q. Did you decide you were going to do it, or did it come  
2 upon you like the devil made you do it?

3 MR. FRIEDMAN: Objection, Your Honor.

4 THE COURT: I think it's been answered. You are  
5 being argumentative now. She's answered.

6 BY MR. BLOOM:

7 Q. Now, you indicated that you did or did not expect that law  
8 enforcement people might be around to speak with you?

9 A. I thought they might.

10 Q. So when you saw them there, they showed their  
11 identification, right?

12 A. Correct.

13 Q. You were not completely taken by surprise?

14 A. No, not completely.

15 Q. You had been cautioned that law enforcement people might  
16 be around to speak to you; is that correct?

17 A. Briana said that in a phone call.

18 Q. Then she said certain things, but among those things she  
19 did not say lie to them?

20 MR. FRIEDMAN: Objection, asked and answered.

21 THE COURT: I think it's been asked several times,  
22 Mr. Bloom.

23 BY MR. BLOOM:

24 Q. Now, did you, in addition to saying I don't recognize that  
25 person, did they ask you some questions about whether or not

1 she had lived with you, that person in the picture had lived  
2 with you?

3 A. Yes, that's correct.

4 Q. And your answer was what?

5 A. No.

6 Q. That she had not? That this person in the picture had not  
7 lived with you; is that correct?

8 A. Correct.

9 Q. You said more than that, didn't you?

10 A. I don't know.

11 MR. BLOOM: Pat, could you please put before the  
12 witness the Exhibits A-1 through 19.

13 THE CLERK: He's got them there.

14 MR. BLOOM: Thank you.

15 BY MR. BLOOM:

16 Q. Could you look at A-2, please?

17 A. A-2, I have it.

18 Q. Do you have it?

19 A. Yes, I do.

20 Q. Did you tell Agent Halla -- and if you look at the bottom  
21 it appears it's also Agent Anthony Torres, T-O-R-R-E-S, did  
22 you tell them that you and your wife have had a variety of  
23 people stay with them over the years?

24 A. That was a miscommunication. I was trying to explain it  
25 was a rental property; and that over the years, many people

1 had stayed there.

2 Q. Excuse me, my question is: Did you say that to them?

3 A. No.

4 Q. Uh-huh, so Agent Halla got it wrong in this report?

5 A. No, it was simple, one or two words is a miscommunication.

6 I was trying to explain it was a rental property, and that  
7 many people had lived there.

8 Q. Mr. Friedman explained to you -- I am sorry, he asked you  
9 this afternoon: Did anyone else ever live with you? And I  
10 think you said no; is that correct?

11 A. That's correct.

12 Q. So, is it your testimony that you did not say to Agent  
13 Halla and Agent Torres that you -- take a look at it, follow  
14 it with me -- that they have had a variety of people stay with  
15 them with them over the years; did you say that to Agent  
16 Halla?

17 A. As I said, it was a miscommunication.

18 Q. What you really said was, this is a rental property, there  
19 have been a lot of people before me, that's probably the  
20 problem here; right?

21 A. That's correct.

22 Q. You were really trying to say -- this is before you moved  
23 in there, right, that's what you are telling us, telling this  
24 jury, this is about before you moved in, that was your intent;  
25 right?

1 A. I was implying that, yes.

2 Q. But somehow, Agent Halla apparently heard that you were  
3 saying to them that you and Kara had a variety of people who  
4 stayed with them, with you, over the years, somehow that Halla  
5 got it wrong?

6 A. Simple miscommunication.

7 Q. Halla got it wrong, is that what you are saying?

8 A. You are putting words in my mouth.

9 Q. You said -- this was about, what you told him was about  
10 before you moved in, and he reports that you have had a  
11 variety of people living with you while you were there?

12 A. There was rush hour traffic going by, a few feet away.

13 Q. So what time of day was it?

14 A. Afternoon.

15 Q. What time in the afternoon?

16 A. Between 3:00 and 5:00.

17 Q. What day of the week was it?

18 A. Tuesday.

19 Q. That's the day you worked till 5:00?

20 A. This is 2006.

21 Q. Well, were you working then?

22 A. No.

23 Q. I am sorry, my mistake. So he came to your house. Were  
24 you actually in the house?

25 A. I was in the house when they knocked on the door.

1 Q. Was anyone else home when they knocked on the door?

2 A. My son was home.

3 Q. How old was he at the time, about seven or eight?

4 A. Correct.

5 Q. Was Kara there?

6 A. No.

7 Q. Was she working?

8 A. Correct.

9 Q. Where does she work?

10 A. For the state, for the Washington State.

11 Q. Was it that office that Mr. Friedman yelled at her?

12 A. She works at the Office of Superintendent of Public  
13 Instruction, and that's where the meeting took place.

14 Q. The meeting where Mr. Friedman yelled at her, that  
15 meeting?

16 A. Yes, that meeting.

17 Q. Did you also go on to say -- back to the first day you  
18 were with Agent Halla -- did you also go on to say that the  
19 duplex next door has had a lot of college students living  
20 there over the years, and that the current renters moved in a  
21 week ago; did you tell them that, too?

22 A. I might have said that, I don't remember.

23 Q. In other words, you didn't just tell them the lie that I  
24 don't recognize that picture, you made up a whole fabric of  
25 lies to support your first lie?

1 MR. FRIEDMAN: Objection, Your Honor, he's arguing  
2 with the witness.

3 THE COURT: If you can answer the question, but at  
4 some point you are going to have to accept the answer and  
5 maybe argue about where it lies in the whole thing.

6 MR. BLOOM: This is the first time I have asked that  
7 question.

8 THE COURT: Let's do this. Before you ask the next  
9 question, let's take the afternoon recess. Don't discuss the  
10 case. Leave your books on the chair. I will have you back in  
11 here about 15 minutes.

12 (Jury not present.)

13 THE COURT: Okay, we will take the afternoon recess.  
14 Would you keep in mind this is cross-examination, so give the  
15 defendant a chance -- let's get a question and answer, but at  
16 some point in time the answer has got to stand. I want you to  
17 have all you need to cross-examine this witness, because it's  
18 important.

19 We will be in recess.

20 THE CLERK: All rise. Court is in recess.

21 MR. BARTLETT: Thank you, Your Honor.

22 (Afternoon recess.)

23 THE COURT: You may be seated.

24 All right. Ready?

25 MR. BLOOM: Yes.

1 THE COURT: Bring in the jury.

2 Was A-2 offered? It wasn't offered, was it?

3 MR. BLOOM: It was not offered.

4 (Jury present.)

5 THE COURT: All right. You may be seated.

6 MR. BLOOM: You just asked if A-2 was offered, and it  
7 was not, but I do offer it now in evidence.

8 MR. FRIEDMAN: Objection, Your Honor. It's a prior  
9 report. It is not his statement, and it isn't admissible for  
10 any reason.

11 THE COURT: I will take up the admissibility, but he  
12 can question about it.

13 BY MR. BLOOM:

14 Q. Now, this phone call that you referred to from Briana  
15 Waters, when did that phone call happen?

16 A. Early 2006.

17 Q. Okay. And in that phone call, did Briana Waters ask you  
18 to protect her?

19 A. No.

20 MR. FRIEDMAN: Objection, Your Honor. This has all  
21 been asked and answered.

22 THE COURT: He's answered that several times.

23 MR. BLOOM: I don't think he answered that question,  
24 sir.

25 THE COURT: Answer that question.



1   **A.**  No.

2   BY MR. BLOOM:

3   **Q.**  Did she say anything about there would be a need to  
4   protect her?

5               MR. FRIEDMAN:  Objection, Your Honor.

6               THE COURT:  Same question.  Let's see if we can get  
7   through this and make objections where they really serve a  
8   real purpose, I guess.

9               MR. BLOOM:  I'm sorry?

10              THE COURT:  Go ahead, ask the question.

11  BY MR. BLOOM:

12  **Q.**  Now, the first time Agent Halla came to you in the fall of  
13  '06 with the pictures, in fact, that wasn't the fall at all;  
14  it was May 16, was it not?

15  **A.**  Correct.

16  **Q.**  And you are looking at that Exhibit A-2 to refresh your  
17  recollection; is that correct?

18  **A.**  Correct.

19  **Q.**  So your memory from about two years ago is not so clear;  
20  you actually had it in the fall, and it was in the spring,  
21  four or five, six months previous.  Is that correct?

22  **A.**  I was just remembering about the quality of the light.  
23  That afternoon reminded me of the fall.  I am not real big on  
24  the calendars.

25  **Q.**  You keep a calendar, right?

1   **A.** That's correct.

2   **Q.** But your memory was, remembering something two years ago  
3 was the fall, correct, and it turns out to be incorrect?

4   **A.** I was just remembering, the quality of the light reminded  
5 me of the fall, so I said the fall.

6   **Q.** That's actually how you identify the day that Agent Halla  
7 came to see you is the quality of the light, is that what you  
8 are testifying?

9   **A.** That's what I said.

10   **Q.** Is that what you are saying, that's how you remember when  
11 it was, based on the quality of the light?

12   **A.** You asked me about the fall and I answered you.

13   **Q.** Now, as we've discussed, you didn't just make a false  
14 statement about identifying the picture, you made up other  
15 details to support the lie that you had told about the  
16 photograph; is that correct?

17   **A.** No, that's not true. There was additional --

18   **Q.** There was a miscommunication because there was traffic  
19 going by and Agent Halla and Agent Torres must have misheard  
20 you; is that correct?

21   **A.** No, there was additional questions about the property and  
22 the nature of the property which I answered.

23   **Q.** And you didn't say to them that you and Kara have had a  
24 variety of people staying with you over the years? You didn't  
25 say that to him?

1   **A.**   No.

2               MR. BLOOM:   I now offer Exhibit A-2.

3               THE COURT:   I thought I said I would take that up.

4               MR. BLOOM:   Okay.

5   BY MR. BLOOM:

6   **Q.**   Now, is it your -- you've heard the name Martha Stewart,  
7   the homemaker and personality on television?

8   **A.**   Yes, I think I have.

9   **Q.**   Are you aware that she did time in prison for the crime of  
10   making a false statement to a federal law enforcement agent?

11   **A.**   I did not know the reason that she was incarcerated.

12   **Q.**   There was a rap singer named Lil' Kim. She also did time  
13   in prison, are you aware, for making a false statement?

14   **A.**   I am not familiar with that story.

15   **Q.**   About Scooter Libby, you know who he is, right?

16   **A.**   Yes, I think so.

17   **Q.**   Do you remember reading that he was accused of making a  
18   false statement to a federal official?

19   **A.**   Something -- he had something to do with the Valerie Plame  
20   case.

21   **Q.**   That's right. So you knew, of course, as of the date,  
22   whatever that date was, that you had lied to Agent Halla; is  
23   that correct, you knew that?

24   **A.**   Yes.

25   **Q.**   Is it your testimony that nobody, no friends, no lawyers,

1 no Mr. Friedmans, no Mr. Halla, your lawyer, nobody told you  
2 that that is an independent federal felony, is that your  
3 testimony?

4 A. I am confused about the question.

5 Q. The question is, as you sit there today --

6 A. Uh-huh, do I know this --

7 Q. -- do you believe that making a false statement to a  
8 federal investigator, such as Mr. Halla, is a separate federal  
9 felony, separate, perjury?

10 A. Yes, I understand that.

11 Q. When did you first come to understand that?

12 A. I am not certain.

13 Q. Was it soon after your wife told you that Mr. Friedman and  
14 Mr. Halla had been to her place of work and told her that  
15 there might be a prosecution, was it sometime after that?

16 A. I don't know.

17 Q. Well, if you would think back -- let me withdraw that.

18 You have testified here in some detail about events that  
19 happened seven years ago. I am asking you to think back, and  
20 try to put together for the jury when it was that you came to  
21 learn that lying to a federal officer is a federal felony.  
22 Think back, when did that happen?

23 A. Let's see, I am not sure. I might have known at the time.

24 Q. At the time of what?

25 A. When Agent Halla came to the door.

1 Q. Had somebody informed you that it is a federal crime?

2 A. I don't know how I knew.

3 Q. Did Eric Waters, Briana's brother, tell you that it's a  
4 separate crime?

5 A. I was not in communication with him.

6 Q. Did you get an e-mail from him?

7 A. I don't know.

8 Q. Did you get an e-mail from him that Briana's lawyer thinks  
9 you should know that it's a separate crime?

10 MR. FRIEDMAN: Objection, Your Honor, asked and  
11 answered.

12 THE COURT: You may answer.

13 But at some point you are going to have to accept his  
14 answer, I don't know.

15 A. I don't know.

16 BY MR. BLOOM:

17 Q. So you say he was not in touch with you by e-mail, is that  
18 your testimony?

19 A. I don't know. He may have sent me something, I don't  
20 know.

21 Q. So you don't remember that?

22 A. No, I don't.

23 Q. And that would have been in the year 2006, you have no  
24 memory of that; is that correct?

25 A. I might have deleted it without reading it.

1 Q. Why would you have done that?

2 A. I might have deleted it along with other e-mails. I might  
3 have deleted it because I didn't want to speak with him.

4 Q. Reading his e-mail wouldn't mean speaking with him.

5 A. I might not have wanted to read his e-mail.

6 Q. Did there come a time, as a result of the FBI trying to  
7 find you, that there was some trouble with your landlord?

8 A. Um, what do you mean?

9 Q. Did your landlord express some dismay that the FBI had  
10 been in touch with him or them and wanted to find you?

11 A. No, he did not.

12 Q. Was there any trouble with the landlord as a result of  
13 these events?

14 A. What do you mean?

15 Q. Whatever you mean. Is there any problem, did you have any  
16 problem with the landlord, did he say anything to you, try to  
17 evict you, did he say I don't like you because the FBI is  
18 snooping around?

19 A. No, nothing like that.

20 Q. Did something happen? Maybe I am missing the right  
21 question here, because you are asking me --

22 A. In the same time period, I got a letter saying that they  
23 were going to renovate the house and do a lot of work on it,  
24 and therefore, the residents had to move. They gave us  
25 notice.

1 Q. So you didn't associate that with this event; is that  
2 correct?

3 A. It was in the same time period.

4 Q. In your mind, did one have anything to do with the other,  
5 at that time?

6 A. No.

7 Q. Now, after Agent Halla left that day in May, is it correct  
8 that about four-and-a-half months later, you and Kara both  
9 went to speak with law enforcement people involved in this  
10 case? If you could look at Exhibit A-3, if you need to  
11 refresh your recollection.

12 A. A-3?

13 Q. Yes, A-3.

14 A. October 6, 2006.

15 Q. Well, that's actually the day of the transcription. The  
16 actual interview appears to be October 3.

17 A. October 3, 2006.

18 Q. Now, on that day, did you tell them the truth?

19 A. Yes.

20 Q. Did you tell them that you are in fact Briana Waters'  
21 cousin?

22 A. That's correct.

23 Q. That was true. Did you tell them your mother and Briana's  
24 mother are sisters?

25 A. Correct.

1 Q. Did you tell them that Briana moved out to the Olympic  
2 area first around June of 1998?

3 A. Yes, she moved to the Olympia area first.

4 Q. Is that what you told them on October 3 of '06? Is that  
5 what you told them?

6 A. Correct.

7 Q. That was true, correct? Correct?

8 Mr. Corrina, are you with me?

9 A. Yes. She -- I thought she was a little earlier than that,  
10 but I believe that's correct.

11 Q. You were telling him the truth that day; is that correct?

12 A. Yes.

13 Q. Let's continue. Did you tell them that you and Kara moved  
14 to Olympia approximately a year later?

15 A. Correct.

16 Q. Did you tell them that Briana stayed with you and Kara off  
17 and on?

18 A. Correct.

19 Q. That was true, right?

20 A. Correct.

21 Q. And the Agent asked you if Briana stayed with you in July  
22 of 2000 and then again in the fall of 2001, and you said that  
23 those periods sounded correct?

24 A. That's right.

25 Q. And that was true?



1 A. Correct.

2 Q. Did you tell them that Waters stayed with you prior to her  
3 moving to California?

4 A. Yes.

5 Q. And that was true?

6 A. Correct.

7 Q. Did you tell them that Briana stayed in your basement at  
8 2411 Capitol Way in Olympia?

9 A. Yes, that's correct.

10 Q. And that was true, right?

11 A. That's correct.

12 Q. And did you tell them that Justin Solondz was Briana's  
13 boyfriend and sometimes stayed with Waters at the house?

14 A. Justin did not live at the house.

15 Q. No, sometimes stayed with Waters at the house. Is that  
16 what you told them?

17 A. Does it say that?

18 Q. Yes. If you look in the third paragraph.

19 A. Last page?

20 Q. First page.

21 A. Yes.

22 Q. That was true?

23 A. Correct.

24 Q. Moving to the fifth paragraph, were you and Kara asked if  
25 Briana had a cell phone when she was living in Olympia, and

1 you told the authorities that she did not?

2 A. Correct.

3 Q. And that was true, right?

4 A. That's correct.

5 Q. Were you shown photographs of William Rodgers, Joseph

6 Dibee and Nathan Block and did you indicate you also

7 recognized Avalon from around town but had never met him?

8 A. That's correct.

9 Q. Was that true?

10 A. That's correct.

11 Q. What I would like you to do, if you would, is go through

12 from there on down, the last paragraph on the first page, read

13 to yourself -- no, let me do it this way. If you move to the

14 second page, did you tell the agents that Briana worked at a

15 frame shop and worked as a nanny?

16 A. Correct.

17 Q. And that was the truth; is that correct?

18 A. Correct.

19 Q. Did you tell them that you couldn't recall the names of

20 the individuals for whom Briana worked as a nanny?

21 A. That's correct.

22 Q. And that was the truth, correct?

23 A. Yes.

24 Q. Did you tell the authorities that you didn't know an older

25 woman friend who Briana may have referred to as an aunt?

1 A. Correct.

2 Q. And did you suggest to the agents that it may have been  
3 one of the women who employed Briana as a nanny?

4 A. That's correct.

5 Q. And that was all true so far, right?

6 A. I was answering as honestly as possible, based on my  
7 memory.

8 Q. So far we haven't come across anything you told them that  
9 isn't true; is that correct?

10 A. That's correct.

11 Q. Did you tell the authorities that Briana held strong  
12 opinions concerning environmental issues?

13 A. Yes.

14 Q. And did you tell them, the authorities, that you did not  
15 feel she would be easily swayed by other people?

16 A. Yes.

17 Q. Did you tell them that you believed Briana had poor  
18 character judgment, citing the relationship with Solondz as an  
19 example?

20 A. Yes, I did.

21 Q. Did you tell the agents that you recalled a time when you  
22 were helping Briana move some of her clothes out of the  
23 basement?

24 A. Yes.

25 Q. Was that true?

1 A. Yes.

2 Q. Moving to the next page for your reference. Did you tell  
3 the agents that you remembered Briana talking about a person  
4 named Ocean?

5 A. Yes.

6 Q. And did you tell them that you recall that Briana had  
7 stayed at his house?

8 A. Yes.

9 Q. And did they show you a picture of the house and you told  
10 them that you didn't recognize the house?

11 A. Correct.

12 Q. That was all true, right?

13 A. Yes, it was.

14 Q. So basically on that day, you were doing your best to tell  
15 the truth about everything they asked; is that correct?

16 A. That's correct.

17 Q. Let's go back to the first page. Look in the middle  
18 paragraph. Did you tell the agents that Briana never asked  
19 you or Kara to rent a car for her? Did you tell them that?

20 A. Yes. It's right here.

21 Q. Did you tell them that?

22 A. Yes, I did.

23 Q. Was that true?

24 A. I was telling them the truth based on what I remembered,  
25 and I did not remember the car at that time.

1 Q. Was that true, as best you could tell it?

2 A. Okay, so you are asking me, on the day of this meeting,  
3 was I telling the truth as best I could?

4 Q. That's correct.

5 A. Yes.

6 Q. Did you also tell them that you did not recall Waters ever  
7 renting a car on that day, October 3 of 2006?

8 A. Yes, that's correct.

9 Q. Did you tell them that?

10 A. Yes, I did.

11 Q. So, is it correct to say that everything you told them  
12 that day we have seen was the truth, correct? Everything.

13 A. I had not yet seen the document, done any research or  
14 tried to remember or figure out what they were talking about.

15 Q. Now, please answer my question. Is it true that  
16 everything you told them on that day was the truth?

17 A. I was trying to tell the truth, but it turned out I made  
18 some mistakes.

19 Q. In fact, it is true that Briana Waters never asked you or  
20 Kara Larson to rent a car for her; that is the truth, isn't  
21 it?

22 A. No.

23 Q. It's also true that you did not recall Briana Waters ever  
24 renting a car; that was also true, wasn't it?

25 A. I don't understand what you are asking. I said yes, I was

1 trying to tell the truth, and yes, this is before I remembered  
2 everything.

3 Q. So you were being questioned in October of '06 about  
4 events in May of '01?

5 A. Correct.

6 Q. And without seeing documents, you had no memory at that  
7 day, at that time and that interview, you had no memory of any  
8 car rental involving Briana Waters, is that correct?

9 A. My memory was triggered by the documents later on.

10 Q. I am sorry, could you say that again?

11 A. My memory was triggered by the documents later on, which I  
12 had not seen at this meeting.

13 Q. My question is, you had no memory at that time, because  
14 you hadn't seen the documents, you had no memory of having  
15 been involved in some kind of car rental event that involved  
16 Briana Waters in May of '01, you had no memory of it as you  
17 spoke to them at that time; is that correct?

18 A. That's correct.

19 Q. You had already spoken to them once and been shown  
20 photographs of Briana; is that correct?

21 A. When they came to my house the first time?

22 Q. Yes, sir.

23 A. Yes, that's correct.

24 Q. When all that traffic was going by and people couldn't  
25 hear each other?

1   **A.** That's correct.

2   **Q.** Now, you testified here in some detail about supposed to  
3 be Thursday, supposed to be Friday, it turned out to be  
4 Saturday, going to the hospital, abdominal pains, all kinds of  
5 details, all of which were triggered by seeing a document or  
6 two; is that correct?

7   **A.** I was also actively trying to remember. I also looked at  
8 my calendar and my notes from that time period, and then I got  
9 a picture of that time period and then the pieces came  
10 together.

11   **Q.** Your calendar is in evidence now. Could you take a look  
12 at your calendar and tell us what it was you referred to?  
13 What is it that triggered your memory? What in the calendar  
14 triggered your memory?

15   **A.** Let's see, when I looked at this the first time --

16           THE COURT: What exhibit are we talking about here,  
17 is there a number on it?

18           MR. BLOOM: I will give it to you in a second.

19           MR. FRIEDMAN: It's 777.

20           THE COURT: Do you want to put it up again? It is  
21 admitted.

22           MR. BLOOM: Sure, I will do that, if they can do it  
23 easily.

24           Thank you Agent Halla.

25   **A.** Anyway, when I looked at the calendar, actually the notes

1 about bicycle and bicycle repair were the first ones to clue  
2 me into that time period.

3 Q. So it was about, this car rental was about your bikes  
4 being in the shop?

5 A. No. That's just what clued me into the time period.

6 Q. In fact, were your bikes in the shop on the weekend of the  
7 18th, 19th, 20th, and 21st of May?

8 A. No.

9 Q. They were not?

10 A. No. It's listed here on the 30th.

11 Q. I am sorry, sir?

12 A. There's a note here on the 30th.

13 Q. When did your bikes go in the shop?

14 A. According to this --

15 Q. No, according to your memory, and use this if you need to,  
16 but when did your bikes go in the shop?

17 A. Let' see, I see a note on the 30th of May.

18 Q. "Take bike in before noon," correct?

19 A. Correct.

20 Q. So this had nothing to do -- is it your testimony that  
21 this car rental had nothing to do with your bikes being in the  
22 shop?

23 A. That's correct.

24 Q. What's your mother's name?

25 A. Excuse me?



1 Q. Your mother's name?

2 A. It's a long name, Lenore Maire Legaux McCuen Collins..

3 Q. Did you tell your mother that the reason for this car  
4 rental was that your bikes were in the shop?

5 A. No.

6 Q. You never did say that to your mother?

7 A. Correct.

8 Q. Can you think of any reason that she would tell Briana's  
9 mother that that's what you said?

10 A. I have no idea.

11 Q. I will get back to the bikes later.

12 Now, after October 3, when you had this interview where  
13 you told the truth to the best of your knowledge, where  
14 apparently you said that Briana never asked you to rent a car  
15 for her, and that you didn't recall Waters ever renting a car,  
16 were you subpoenaed to go to a Grand Jury a couple weeks  
17 later?

18 A. That's correct.

19 Q. Did you have a lawyer?

20 A. No, I did not.

21 Q. Did anyone suggest to you it might be a good time to get a  
22 lawyer?

23 A. Yes.

24 Q. Who suggested that?

25 A. My father.

1 Q. Did you get a lawyer?

2 A. No, I did not.

3 Q. Did anyone else suggest to you it would be a good time to  
4 get a lawyer?

5 A. Not that I recall.

6 Q. Now, in the Grand Jury, both of you testified and Kara  
7 testified, is that the case?

8 A. That's correct.

9 Q. Would it have been a couple weeks after this interview,  
10 October 25th, does that ring a bell? If you need to, please  
11 refer to Exhibit A-4, the next exhibit.

12 There will be a date on the front.

13 A. Exhibit A-4.

14 Q. Yes, sir. Is that Grand Jury testimony?

15 A. Yes, it is, for October 25, 2006.

16 Q. Right. Was it Mr. Friedman who was the person asking you  
17 questions?

18 A. That's correct.

19 Q. And did you swear to tell the truth under oath as you have  
20 done in this courtroom?

21 A. That's correct.

22 Q. Were you doing the best you can to tell the truth?

23 A. Yes, I was.

24 Q. Was it explained to you by Mr. Friedman or by Agent Halla  
25 or by anyone else in law enforcement why you were called upon

1 to testify in the Grand Jury?

2 **A.** Um, I was basically asked the same questions that you see  
3 on here when I arrived.

4 **Q.** Please try to answer my question. Was it explained to you  
5 by anyone from law enforcement why it was you were being  
6 summoned to testify before the Grand Jury?

7 **A.** Right before I entered the Grand Jury room to give  
8 testimony, it was explained that this was in regards to Briana  
9 and what she was accused of.

10 **Q.** Have you ever heard the phrase "perjury trap"?

11 **A.** No, I have not.

12 **Q.** How long have you been represented by Mr. -- pronounce it,  
13 please -- Zul auf?

14 **A.** Zul auf, yes. Since January 2007, perhaps a little  
15 earlier.

16 **Q.** More than a year now; is that correct?

17 **A.** That's correct.

18 **Q.** Have you had discussions with him about the phrase  
19 "perjury trap"?

20 **A.** No, I have not.

21 **Q.** Have you had discussions with him about perjury?

22 **A.** He has told me to tell the truth.

23 **Q.** Have you had discussions with him about perjury?

24 **A.** No, I have not.

25 **Q.** Have you had discussions with him about obstruction of

1 justice?

2 **A.** No, I have not.

3 **Q.** Have you had discussions with him about lying to a federal  
4 official?

5 **A.** No, I have not.

6 **Q.** Now, you understood you were under oath in this Grand  
7 Jury; is that correct?

8 **A.** That's correct.

9 **Q.** And Mr. Friedman introduced the circumstance, told you  
10 about why you were there, and gave you the lay of the land  
11 about what happens in a grand jury more or less; is that  
12 correct?

13 **A.** Yes, it is.

14 **Q.** And then he asked you about yourself -- start with page 5:  
15 "Where did you grow up?"

16 "I grew up in Philadelphia."

17 Then he went on to ask further questions, and do you  
18 remember being asked -- if you would look at page 9. In front  
19 of the Grand Jury, under oath, do you remember being asked in  
20 front of the Grand Jury:

21 "Question: Did Briana ever ask you to rent a car for  
22 her?"

23 Do you remember giving the answer:

24 "Answer: I don't remember."

25 **A.** Yes, I do.

1 Q. Did you then, were you then asked by Mr. Friedman:

2 "Question: Did you ever, in fact, rent a car for  
3 Briana?"

4 Do you remember being asked that question?

5 A. Yes, I do.

6 Q. What was your answer?

7 A. "No. "

8 Q. Then Mr. Friedman asked you:

9 "Question: And how do you know that?"

10 A. Yes, he did.

11 Q. Did you give an answer?

12 A. Yes, I did.

13 Q. What was your answer?

14 A. It says here, on page 9, "Just because" --

15 Q. Say it a little slower and louder so the jury can hear it.

16 A. "Just because that would have required -- we wouldn't --  
17 I would not have -- we -- we didn't have much money. I was  
18 starting a new job. We wouldn't have given away our credit  
19 card or risked the liability of renting someone a car on the  
20 credit card."

21 Q. So not only did you say that you didn't rent a car for  
22 Briana Waters, but you actually gave an explanation as to why  
23 not; is that correct?

24 A. I speculated about why that might have been.

25 Q. And you were under oath at that time just as you are now ,

1 correct?

2 **A.** Correct.

3 **Q.** Do you remember, if you turn to page 13, do you remember,  
4 after Mr. Friedman had asked you questions, a Grand Juror  
5 person, who's a member of the Grand Jury, asked you a  
6 question? If you look at line 19, a Grand Juror asked you:

7 "Question: Did you ever suspect during this time  
8 that Briana stayed with you -- while Briana or Justin that  
9 was -- Something that was going on that perhaps wasn't on the  
10 up-and-up?"

11 Did you answer: "No, I -- I did not suspect any illegal  
12 activity. She was involved with a lot of activism. She  
13 mentioned -- she would often mention activist activities at  
14 Hood Mountain, protests, things like that, and I viewed them,  
15 although some of these weren't appreciated, I believe they  
16 were legal."

17 Do you remember giving those answers to those questions?

18 **A.** Yes, I do.

19 **Q.** Is that the truth?

20 **A.** Yes. She asked me, and I answered truthfully.

21 **Q.** If that was your belief in October in front of the Grand  
22 Jury, October of '06, what was it that you thought you were  
23 protecting her from?

24 **A.** I didn't know. I just knew she was in trouble.

25 **Q.** Because it had been communicated by her that she was in

1 some kind of trouble; is that correct?

2 A. That's correct.

3 Q. And in that same communication, she did not ask you to lie  
4 for her; is that correct?

5 A. That's correct.

6 Q. And she did not ask you to protect her; is that correct?

7 A. That's correct.

8 Q. Now, on that day in the Grand Jury, did you pick out  
9 Briana Waters' photo? Look at page 15 if you need to refresh  
10 your recollection.

11 A. Yes, they -- you are asking me if they showed the photo at  
12 the Grand Jury?

13 Q. Yes. Look at line 19. Did you pick out a picture that's  
14 identified as RC-4 and say, "That's my cousin Briana"?

15 A. That's correct.

16 Q. So on that day you told the truth, correct?

17 A. At the Grand Jury?

18 Q. Uh-huh.

19 A. On October 25, 2006?

20 Q. That's correct.

21 A. Yes, that's correct.

22 Q. Now, did Kara also testify on that day in the Grand Jury?

23 A. Yes.

24 Q. You were not in the room; is that correct?

25 A. No, I was not in the room.

1 Q. They have people separate when they testify; is that  
2 correct?

3 A. That's my understanding.

4 Q. After she testified and you testified, who went first, you  
5 or Kara?

6 A. I went first.

7 Q. And after she testified, you did not have a lawyer; is  
8 that correct?

9 A. That's correct.

10 Q. And Mr. Friedman asked you if you were comfortable  
11 proceeding without a lawyer; is that correct? At the  
12 beginning of the Grand Jury session.

13 A. I don't remember. Probably.

14 Q. And you said you were?

15 A. Yes.

16 Q. Now, you knew at that point that you had committed  
17 yourself to the position that Briana Waters had not asked you  
18 to rent a car and in fact had not rented a car in your memory;  
19 is that correct?

20 A. I don't understand.

21 Q. You knew you were under oath as of that date saying Briana  
22 Waters did not rent a car, that you did not rent a car for  
23 Briana Waters?

24 A. That was my answer at the Grand Jury, correct.

25 Q. And you know the meaning, you do know, even without



1 speaking to a lawyer, if you testify under oath that there is  
2 a perjury risk if you change that position; is that correct?

3 **A.** Are you asking me if I know what perjury is?

4 **Q.** No. I am asking you, even without consulting a lawyer,  
5 it's common knowledge, if you lie in the Grand Jury or under  
6 oath in any legal proceeding that you could possibly be  
7 prosecuted for perjury; is that correct?

8 **A.** I think that's common knowledge, yes.

9 **Q.** Right. Now, that was October of '06. I want to move up a  
10 couple months to January 19 of '07. Now, we've already talked  
11 about that day. That was the date Mr. Friedman and Agent  
12 Halla went to Kara's place of employment, an office at the  
13 State of Washington; is that correct?

14 **A.** That's my understanding.

15 **Q.** Do you know what time of day that was?

16 **A.** I was not there.

17 **Q.** Well, whatever time of day it was, there came a time after  
18 that, that evening or that afternoon, that you learned from  
19 Kara that they had been there; is that correct?

20 **A.** That's correct.

21 **Q.** Did she call you from her place of work after they left?

22 **A.** Yes, she did.

23 **Q.** That would be something really important for her to tell  
24 you; is that correct?

25 **A.** I don't understand.

1 Q. It would be an important thing for her to tell you right  
2 away, that the FBI and a prosecutor had been to see her?

3 A. Yes.

4 Q. And did she tell you that the prosecutor Mr. Friedman had  
5 yelled at her?

6 A. Yes.

7 Q. Did she tell you this on the telephone on that very day?

8 A. Yes, she called me on the telephone.

9 Q. Now, if you need to refresh your recollection for these  
10 next questions, could you look at Exhibit A-6. It is the  
11 interview with Kara Larson in which you were not present, so I  
12 am not going to ask you what you remember from that interview  
13 because you were not there. I am going to be asking you  
14 questions about what Kara told you had happened at that  
15 meeting.

16 Are you at that document?

17 A. A-6?

18 Q. Yes.

19 A. Friday.

20 Q. Friday January 19, 2007, right?

21 A. Yes, I have the document.

22 Q. Did Kara tell you they had shown her a photograph of the  
23 car on that day?

24 Let me withdraw that.

25 How long was your telephone conversation with Kara on that

1 day?

2 A. That's hard to say. I can't be sure.

3 Q. Well, did she tell you some highlights, and then you  
4 decided you would talk in detail about it at home that  
5 evening?

6 A. I can't remember.

7 Q. Do you remember talking about that meeting, that interview  
8 at home that evening, whatever evening it was -- I am not  
9 asking you to remember the date -- but whatever day it  
10 was that Mr. Friedman and Agent Halla went to see her, did you  
11 have a long conversation with her at home that night about the  
12 events?

13 A. I spoke with her that same day, probably both on the phone  
14 and at home, yes.

15 Q. That would make sense, right?

16 A. I think no.

17 Q. This is an important event?

18 A. I think so.

19 Q. And did she tell you that they had confronted her with a  
20 printout of a Budget Car rental?

21 A. That she had seen documents and a photograph, yes.

22 Q. And they had shown, the agent and the prosecutor had shown  
23 it to her; is that correct?

24 A. Yes, that's correct.

25 Q. Did she tell you that Agent Halla -- try to follow my

1 question; it's an important question -- did she tell you that  
2 at that meeting, Agent Halla had said to her that he believes  
3 that the vehicle shown in the picture was used in the arson at  
4 the University of Washington? Did she report that to you,  
5 that Agent Halla had said that to her?

6 **A.** She did not report that to me.

7 **Q.** Did she talk to you about, at all, about whether or not  
8 there was something that had come up during that meeting that  
9 it may be or they believed or they want to believe that this  
10 car was used in connection with the arson at the University of  
11 Washington? Did that subject matter come up at all when you  
12 spoke to Kara Larson?

13 **A.** Well, we knew they had asked us questions about the car in  
14 interviews and at the Grand Jury. So, when the documents and  
15 photograph came to light, we were wondering if we were --  
16 yeah, we put two and two together, and we said that must be  
17 the car they have been asking about.

18 **Q.** Well, did you get a little help? Did she tell you she'd  
19 gotten a little help in putting two and two together, that  
20 Agent Halla had said to her on that day that we believe, or I  
21 believe that this car was used in the UW arson? Did she tell  
22 you that Agent Halla gave her a little bit of a gigantic hint  
23 about what they were doing and saying? Did she tell you that?

24 **A.** No.

25 **Q.** Take a look at that first page of the interview with your

1 wife. Would you look at the middle paragraph that begins with  
2 the words "The writer."

3 A. I see the paragraph.

4 Q. Okay. Could you look at the middle sentence there, it  
5 also begins with the words "The writer also advised"?

6 A. I see that.

7 Q. Does that in any way either refresh your recollection or  
8 cause you to reconsider your testimony with regard to the  
9 issue of whether or not Agent Halla advised your wife that he  
10 believes that this particular vehicle was the rental vehicle  
11 used by the subjects of the 2001 University of Washington  
12 arson? Does reading that in any way refresh your recollection  
13 or cause you to reconsider your answer --

14 A. No.

15 Q. -- as to whether or not Kara told you that he had said  
16 that?

17 A. No.

18 Q. You know from television or from common knowledge, you  
19 know the concept of leading a witness; is that correct?

20 A. I think so.

21 Q. It's kind of what I am doing a little bit, right?

22 A. Correct.

23 Q. The idea of giving a person information, potential witness  
24 information about what the questioner believes, do you  
25 understand that to be leading?

1 A. I don't understand what you said.

2 Q. Has Kara told you about what happened at this meeting?

3 A. Uh-huh.

4 Q. Did she tell you that "They made it clear to me that they  
5 want us to say that the car that we rented was used in the  
6 arson"? Did she say things like that to you?

7 A. No.

8 Q. She did report the important aspects of the interview with  
9 her, right?

10 A. She told me she had seen documents and photographs, and  
11 how could that be, because we had not yet remembered.

12 Q. In fact, did she tell you at some point that afternoon on  
13 the phone or that evening in person that Mr. Friedman had  
14 advised her that due to the new information regarding the  
15 rental of this particular car, the Grand Jury may ask that  
16 perjury charges be brought against her and you?

17 If you look at the paragraph just below the one we looked  
18 at before, the paragraph that begins with A. U. S. A Friedman,  
19 Assistant United States Attorney Friedman. Could you read  
20 that paragraph to yourself?

21 A. Yes.

22 Q. Did Kara tell you that upon hearing that she asked  
23 Mr. Friedman if she was being threatened with going to jail?

24 A. I see that, yes.

25 Q. Did she tell you that Mr. Friedman advised her that she

1 was not being threatened, but that the Grand Jury may  
2 interpret her and your statements as perjury, and that they,  
3 the Grand Jury, may ask for charges to be brought against the  
4 two of you? Did she tell you that?

5 **A.** No, that's not what we talked about.

6 **Q.** You didn't talk about that. You talked about what a nice  
7 day it had been and the color of the sky and stuff like that?

8 **A.** That's not correct.

9 **Q.** Did you talk about the possibility that you might not get  
10 to see your son if you had to go to jail?

11 **A.** That's not correct.

12 **Q.** Have you told anybody that you were concerned that if you  
13 go to jail or prison, you might not get to see your son for a  
14 while or for a long time?

15 **A.** That's not correct.

16 **Q.** Is it correct, soon after that event and your discussion  
17 that night with your wife, you contacted an attorney?

18 **A.** Soon after, yes.

19 **Q.** How soon after?

20 **A.** I would say a few days to a week.

21 **Q.** And was Mr. Zulauf the first attorney you contacted?

22 **A.** That's correct.

23 **Q.** Did somebody recommend him to you?

24 **A.** Indirectly, yes.

25 **Q.** Did you and Kara both go to see him?

1   **A.**   That i s correct.

2   **Q.**   And you decided to retain him?

3   **A.**   Yes, we di d.

4   **Q.**   Did he ask you to tell them -- I am not going to ask you  
5   lawyer-client privilege information -- but did you tell him  
6   the si tu a ti on?

7   **A.**   Yes.   He wanted to hear all the events from the be gi n ni ng  
8   un ti l we had come to see him, and we di scussed that.

9   **Q.**   How much time did you spend together with him the fi rs t  
10   time you met wi th him?

11   **A.**   I would say two to three hours.

12   **Q.**   You di d or di d not have a di scussi on about per j u ry?

13   **A.**   Most of the ti me i t was me ex pl ai ni ng what had happened  
14   and why and hi s ad vi ce about what was go i ng to happen next.

15   **Q.**   Di d you tal k about per j u ry?

16   **A.**   No, we di d not.

17   **Q.**   Am I cor rect that maybe a week before, Mr. Fri ed man had  
18   told Kara that the Grand Jury may ask that per j u ry charges be  
19   brought against the two of you; di d you tell him that?

20   **A.**   We told him everything from start to fi ni sh.

21   **Q.**   Di d you tell him that?

22   **A.**   We ex pl ai ned there was a con tra dic ti on be tween the  
23   doc u men ts and the me mo ri es that that tri gg er ed and what had  
24   been said at the Grand Jury.

25   **Q.**   Di d you tell him that Mr. Fri ed man had said to Kara, on



1 the 19th of January, maybe a week before you were actually  
2 talking to this attorney, did you tell him that Mr. Friedman  
3 had told Kara that the Grand Jury may interpret her and your  
4 statements as perjury, and that the Grand Jury may ask for  
5 charges to be brought against you? Did you tell that to your  
6 lawyer?

7 **A.** I described the interview to my lawyer as best I could.

8 **Q.** Well, did Kara describe, because she's the one who did the  
9 interview?

10 **A.** Let's see. No, she did not.

11 **Q.** Before you went to see Mr. Zulauf, did you and Kara have a  
12 conversation where you said to each other, listen, we can't  
13 tell this lawyer that Mr. Friedman was talking about a Grand  
14 Jury indictment for perjury, we can't tell that to our lawyer?  
15 Did you make a decision that you weren't going to tell him  
16 about it?

17 **A.** No, not at all.

18 **Q.** It just never came up?

19 **A.** I think you are misunderstanding the nature of the  
20 interview.

21 **Q.** Perhaps I am. Did it ever come up that Mr. Friedman had  
22 suggested that maybe the Grand Jury might want to indict you  
23 for perjury?

24 **A.** At the first interview, Mr. Zulauf was deciding whether or  
25 not he was going to take us on as clients. So the goal was to

1 tell the whole story, and then have him make a decision at the  
2 end or the next day.

3 Q. And as part of that story, did you think it would be wise  
4 and full disclosure to tell him what Mr. Friedman had said to  
5 your wife?

6 A. Yes, I described that interview as best I could.

7 Q. My question specifically is, did you discuss with  
8 Mr. Zulauf, Mr. Friedman thought the Grand Jury might be  
9 considering charging you and your wife with perjury? Did you  
10 tell him that?

11 A. Not in those words, no. I did the best I could to  
12 describe the interview without having been there.

13 Q. After that two- or three-hour meeting, Mr. Zulauf decided  
14 he was going to represent both of you; is that correct?

15 A. Yes.

16 Q. Did you have any more meetings with him?

17 A. Yes, in the future we did.

18 Q. About how many meetings did you have with him?

19 A. Meeting implies that we were in person, but there were  
20 also times I spoke with him on the phone.

21 Q. Everything, the works: Telephone, in person, e-mail.

22 A. Let's see, to the best of my recollection, I am going to  
23 say twice in person and several times on the phone.

24 Q. Did you ever tell him that Mr. Friedman had told Kara that  
25 the Grand Jury might want to consider perjury charges against

1 you? Did you ever tell him that?

2 A. I told him something along the lines of -- that, to the  
3 best of my knowledge, during the interviews, the penalty for  
4 perjury was brought up.

5 Q. By whom?

6 A. By Mr. Friedman.

7 Q. And you told this to Zulauf; is that correct?

8 A. That's correct.

9 Q. As you sit there right now today, is it, in your mind,  
10 that a Grand Jury could well indict you for perjury?

11 A. I am trying to concentrate pretty hard on the question and  
12 answer right now.

13 Q. Before you walked into the room, before Mr. Friedman and I  
14 asked you any questions, he -- let me withdraw that.

15 From the day Kara and you talked about the interview with  
16 her --

17 A. Yes.

18 Q. -- has it been on your mind that you could be indicted for  
19 perjury and she could be indicted for perjury?

20 A. Yes.

21 Q. As you sit there now, I understand there's a lot on your  
22 mind, but is it in your mind that you could be indicted for  
23 perjury for what you said in the Grand Jury?

24 A. Yes.

25 Q. Is it also in your mind that the people who can make that

1 choice are these two gentlemen right here, Mr. Friedman and  
2 Mr. Bartlett? It's up to them what happens to you, isn't it?

3 A. I don't know the answer to that.

4 Q. Do you believe that's true?

5 A. I am not sure how that works.

6 Q. Do you believe that it is true that Mr. Friedman holds  
7 your fate in his hands?

8 A. No.

9 Q. Do you believe that it is true that Mr. Bartlett holds  
10 your fate in his hands?

11 A. No.

12 Q. Do you believe you would get indicted for perjury if you  
13 came and told this jury, "I didn't rent this car for Briana; I  
14 rented this car for ourselves"? Do you think you might get  
15 indicted for perjury if you did that?

16 A. No, I don't think so.

17 Q. Did there come a time about two weeks after Kara had been  
18 interviewed that you and Kara both went to the prosecutor's  
19 office in Seattle and spoke to Mr. Friedman again?

20 A. Is this along with our lawyer?

21 Q. Yes, with your lawyer.

22 A. After the Grand Jury and so forth?

23 Q. Yes. If you look at Exhibit A-8, in February, February  
24 1st, about two weeks after they had come to Kara's place of  
25 employment.

1 Let me help you, and maybe it will help the jury, too.

2 MR. BLOOM: Can I get a hookup here, please, Pat?

3 Thank you.

4 BY MR. BLOOM:

5 Q. I have written this out by my scratchy handwriting, just  
6 to help you and the jury understand the chronology.

7 There came a time you were contacted by Briana; is that  
8 correct?

9 A. By telephone, yes.

10 Q. And sometime thereafter, is it correct, that on May 16,  
11 that's when Agent Halla came to see you, showed you a picture  
12 of Briana, and you said, "I don't know that person"?

13 A. Correct.

14 Q. Then October 3, there was another visit from the FBI. Do  
15 you remember that?

16 A. Yes.

17 Q. And that's the one where I went through where you told the  
18 truth about everything. Do you remember that?

19 A. Do I remember when you were asking me questions?

20 Q. Yes, I do. That's what I mean.

21 A. Yes, I remember when you were asking me questions.

22 Q. That's where you said during that interview that Briana  
23 never asked you or your wife to rent a car for her, and that  
24 you and your wife did not recall Briana ever renting a car.  
25 It's that interview right there, October 3rd?

1 A. Right. That's right.

2 Q. About three weeks later you went to the Grand Jury; is  
3 that correct?

4 A. Correct.

5 Q. And you said it again?

6 A. That's correct.

7 Q. No car, not connected with Briana Waters; is that correct?

8 A. That was my Grand Jury testimony.

9 Q. Uh-huh. Then January 19, that's when Mr. Friedman and  
10 Agent Halla went to Kara's place of work and yelled at her?

11 A. January 19, that was the interview at Kara's work.

12 Q. And then I put the word attorney in. About a week later  
13 you got an attorney?

14 A. That's basically correct, yes.

15 Q. And then about a week after that, there was another  
16 interview by the FBI, February 1st?

17 A. That's basically correct, yes.

18 Q. Let's talk about that interview.

19 MR. BLOOM: Judge, this will take a while. Perhaps  
20 it's a good time to break for the day. I can continue, but  
21 it's been a long day.

22 THE COURT: Let's get what you got. Let's go until  
23 4:00.

24 BY MR. BLOOM:

25 Q. In that interview, you were in Mr. Friedman's office. If

1 you could look at -- I think we were already there, let me get  
2 back to it.

3 That would be Exhibit A-7, I believe. Do you have it in  
4 front of you?

5 A. Are we talking A-8 or A-7?

6 Q. A-8 is the interview with Kara. A-7 is the interview with  
7 you.

8 A. A-7?

9 Q. I think so.

10 A. February 1st, 2007?

11 Q. Yes. Is that correct?

12 A. Yes, I have that one.

13 Q. Now, did you believe -- you believed you were in trouble  
14 enough that you got yourself a lawyer; is that correct?

15 A. Well, I thought I was finished after the Grand Jury, I  
16 thought I was finished with the whole thing. So since it was  
17 continuing, it was time to get a lawyer.

18 Q. When you say it was continuing, Mr. Friedman and Mr. Halla  
19 had come to Kara's place of work, and they told her things  
20 that she regarded as a threat, right?

21 A. Wait, what's your question?

22 Q. My question is, on January 19 --

23 A. Yes, they came to Kara's work.

24 Q. I am sorry.

25 A. On January 19, yes. That was the interview at Kara's

1 work.

2 Q. So you knew, from what Kara told you that day, January 19,  
3 that this wasn't over at all?

4 A. That's true.

5 Q. And that's why you got a lawyer?

6 A. That's true.

7 Q. So is it fair to say you thought on that date, February 1,  
8 you might be in some trouble?

9 A. I think that's fair to say, yes.

10 Q. What trouble was it, in your mind, that you might be in?

11 A. I was worried at that time, when I came and said that the  
12 documents had triggered my memory, that people wouldn't  
13 believe me based on having been interviewed about it several  
14 times.

15 Q. So you thought the trouble was perjury?

16 A. No.

17 MR. FRIEDMAN: Objection. He's arguing with the  
18 witness.

19 BY MR. BLOOM:

20 Q. What kind of trouble did you think you might be in?

21 A. I was worried people wouldn't believe me.

22 Q. So you were afraid they wouldn't be your friend or you  
23 would be accused of a crime, or both?

24 A. Well, there had been a miscommunication.

25 Q. Were you afraid that you might be accused of one or more



1 crimes?

2 **A.** No. I needed to resolve the miscommunication, and I was  
3 concerned that I would not be able to do that.

4 **Q.** I am sorry, your voice is dropping. Could you say it  
5 louder?

6 **A.** I was concerned there was a miscommunication I needed to  
7 resolve, and I was concerned I might not be able to do that  
8 effectively.

9 **Q.** Now, you knew that you had intentionally failed to  
10 identify Briana's picture; you knew that, right?

11 **A.** That's not what was prominent in my mind in the timeframe  
12 you are talking about now.

13 **Q.** When you were going to see them, at the time you went to  
14 find a lawyer --

15 **A.** Right.

16 **Q.** -- you knew one of the things that had happened is you had  
17 lied to Agent Halla about the photograph of your cousin. You  
18 had lied to him, and you knew that?

19 **A.** I was not worried about that.

20 **MR. FRIEDMAN:** Objection.

21 **BY MR. BLOOM:**

22 **Q.** You were not worried about that. Did you speak with  
23 Mr. Zulauf to tell him? Did you tell him that fact, that you  
24 had lied?

25 **A.** I gave him all the information that I had.

1 Q. Did you tell him that fact, that you had lied to Agent  
2 Halla?

3 A. I must have.

4 Q. Did he say to you, oh, I am sorry to have to tell you  
5 this, but that's a separate federal crime that can put you in  
6 prison?

7 A. That was not the context in which we discussed that.

8 Q. In the several times that you spoke to Mr. Zulauf, did he  
9 ever tell you that lying to Agent Halla on that first day that  
10 you saw him is a separate federal crime? Did he ever tell you  
11 that?

12 A. That's not the nature of the conversation.

13 Q. Whatever the nature of the conversation was, did he ever  
14 tell you that?

15 A. That's not what we were talking about. That's not what  
16 happened.

17 Q. Ever, in any of the conversations you had with him?

18 A. I don't remember. There were many conversations for many  
19 hours. It's possible it came up. But you --

20 Q. Are you telling this jury that you were never informed,  
21 and to this day you are not aware of the possibility that you  
22 committed a crime of making a false statement to a federal law  
23 enforcement officer? Is that your testimony?

24 A. No. I already told you, yes, I did make that statement.

25 Q. No, no. Not the statement that you made. We know you

1   I lied. You've said that.

2           The question is, are you aware, as you sit there today,  
3   that that lie constitutes a federal crime?

4           MR. FRIEDMAN: Objection, Your Honor. This has all  
5   been asked and answered several times.

6           THE COURT: You may answer, if you can any different  
7   than you have before.

8   **A.** Are you asking, am I aware that that's considered a crime?

9   BY MR. BLOOM:

10   **Q.** Yes.

11   **A.** Yes, I am aware of that.

12   **Q.** When did you become aware of that?

13   **A.** I don't know. I don't know.

14           THE COURT: All right. Let's break at this point.  
15   It's 4:00. You may go home, get a good night's sleep. See  
16   you back here, hopefully, at the same place at 9:00.

17           As always, don't discuss anything. Don't start reading  
18   anything or looking at anything. Anything you need to decide  
19   this case you will have here in this courtroom.

20           Leave your books on the chair. I will see you then.

21           (Jury not present.)

22           THE COURT: All right, you may be seated.

23           The witness, you may step down.

24           I will have you go back outside in the waiting room.

25           THE WITNESS: Thank you, Your Honor.

1 MR. BARTLETT: Just for scheduling purposes, Your  
2 Honor, perhaps Mr. Bloom could provide us a timeframe when  
3 he's going to end this.

4 MR. BLOOM: I don't want to commit to that, but just  
5 as a courtesy, I would say another two or three hours.

6 THE COURT: Well, okay. I don't know how often we  
7 have to go over these things back and forth. There comes a  
8 point in time where you have to accept the answer whether you  
9 agree with it or whatever. It sounds sometimes like a broken  
10 record. I'd like you to keep that in mind as you go through.

11 Anything else I need to take up? Have you got a list of  
12 witnesses, you know, who's coming?

13 MR. FOX: I believe Ms. Kolar is coming.

14 THE COURT: You might not need her tomorrow.

15 Let me mention about that. Everything you have that deals  
16 with the witnesses, bring it all with you when you come so you  
17 won't forget it and leave it back in the hotel or some place.

18 MR. FOX: I didn't forget it, but I have a lot of  
19 boxes and they told me she wasn't on.

20 THE COURT: Don't listen to them, listen to what I am  
21 telling you. Bring everything you have so you have it here.  
22 If somebody falls out of line or somebody gets hit in the  
23 street, or whatever, I don't want to close the case down.

24 MR. FOX: Sure.

25 THE COURT: I appreciate that.

1 MR. FOX: There are a couple of loose ends. I don't  
2 know whether you want to deal with them now or tomorrow  
3 morning.

4 THE COURT: I don't know. Tell me what they are.

5 MR. FOX: One thing, Your Honor. I sent back to the  
6 Court a courtesy copy of -- I am afraid I don't remember the  
7 evidence number that Pat marked them as. Exhibit A-193, is  
8 that right?

9 THE CLERK: Is it the video?

10 MR. FOX: The DVD.

11 THE COURT: What is that about?

12 MR. FOX: That was possibly impeachment evidence for  
13 Lacey Philabaum. It's actually a different video than we  
14 were talking about in court.

15 I provided a copy to the government, I provided a copy to  
16 the Court. Should the need arise that we would want to play  
17 that or -- I am following up on our final conversation on  
18 Friday. So I provided a copy to the Court and to the  
19 prosecutor so you can review it if need be. There was one  
20 particular clip on that DVD that directly contradicts what  
21 she's testified to in court.

22 THE COURT: Why don't you give me the exact thing  
23 that contradicts. When I look at it, I will have that in mind  
24 when I look at it. I don't know what's in it. I haven't seen  
25 it.

1           MR. FOX: Sure. I will get the Court the minute site  
2 by tomorrow.

3           THE COURT: I want to know exactly what you are  
4 talking about so I can know what I am looking for.

5           MR. FOX: Sure.

6           The other thing, Your Honor, is that based on Lacey  
7 Phillabaum's testimony and the impeachment of her with her  
8 prior statements to David Carr, the New York Times reporter,  
9 where she denied ever telling David Carr that she had told the  
10 FBI and U.S. Attorney what she believed that they already  
11 knew, we would like to renew our prior motion that we made ex  
12 parte to have David Carr served with an out-of-district  
13 subpoena and brought to court to testify to tie up that  
14 impeachment.

15           THE COURT: I believe I ruled on it.

16           MR. FOX: You ruled on it previously to her  
17 testimony. She has now testified. She has now denied making  
18 that statement. She went on for a long time saying that  
19 Mr. Carr's memory of the conversation was wrong, and besides,  
20 my investigator's notes were probably incorrect, given the  
21 fact that she misidentified the e-mail address. But we  
22 believe that now that prior inconsistent statement is ripe and  
23 that we are obligated, actually, to tie up that impeachment by  
24 bringing David Carr into court.

25           THE COURT: Present it to me in the same way I am

1 talking about the video.

2 MR. FOX: I will file something in writing.

3 THE COURT: Okay. All right, anything else we need  
4 to take up?

5 MR. BARTLETT: I just missed the number on the video.  
6 A-138?

7 THE COURT: A-193. Do they have a copy of this?

8 MR. FOX: Yes.

9 THE COURT: The same one you submitted around  
10 noontime?

11 MR. FOX: Yes.

12 THE COURT: Okay. I think it has Lacey on it?

13 MR. FOX: Yes. Tomorrow I will get you the minute  
14 site.

15 THE COURT: All right. Anything else we need to get  
16 in today?

17 MR. BARTLETT: Not that I am aware of.

18 THE COURT: All right. See you all at 8:30.

19 THE CLERK: All rise, court is adjourned.

20 (The Court recessed to Wednesday, February 20, 2008,  
21 at the hour of 9:00 a.m.)

22 \* \* \* \* \*  
C E R T I F I C A T E

23 I certify that the foregoing is a correct transcript from  
24 the record of proceedings in the above-entitled matter.

25 /S/ Teri Hendrix  
Teri Hendrix, Court Reporter

May 2, 2008  
Date